

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# NO. 75-4223

## United States Court of Appeals

FOR THE SECOND CIRCUIT

Nos. 75-4223, 75-4243

NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*

and

LOCAL 1199, DRUG AND HOSPITAL UNION, RWDSU, AFL-CIO,

*Intervenor,*

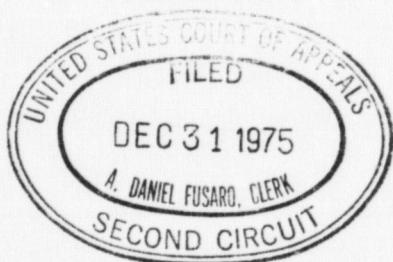
v.

HENRY BOOK, WILLIAM RUSS AND ROBERT KLEIN,  
d/b/a SPRAIN BROOK MANOR,

*Respondent.*

On Application for Enforcement of an Order of  
The National Labor Relations Board

### APPENDIX



ELLIOTT MOORE,  
*Deputy Associate General Counsel,*  
National Labor Relations Board,  
Washington, D.C. 20570

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APPENDIX

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
WASHINGTON, D.C.

HENRY BOOK, WILLIAM RUSS AND  
ROBERT KLEIN d/b/a SPRAIN BROOK MANOR

and

LOCAL 1199, DRUG AND HOSPITAL UNION,  
RWDSU, AFL-CIO

and

LOCAL 999, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, CHAUFFEURS, WAREHOUSE-  
MEN AND HELPERS OF AMERICA,

Party to the Contract

Irwin M. Portnoy, Esq., for the  
General Counsel.

John A. Craner, Esq. (Craner, Brennan,  
and Nelson), of Elizabeth, N.J.,  
for Local 999.

Burton H. Horowitz, Esq., (Horowitz &  
Schwartz), of East Orange, N.J.,  
for Respondent.

Richard Dorn, Esq. (Sipser, Weinstock  
Harper & Dorn), of New York, N.Y.,  
for the Charging Party.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Henry Book, William Russ and Robert Klein  
d/b/a Sprain Brook Manor

Case No.: 2-CA-13257

3.21.74 Charge filed.



5.23.74 Complaint and Notice of Hearing, dated.

5.28.74 Respondent's Answer, dated.

5.31.74 Union's Answer, dated.

6. 5.74 Amended Charge, dated.

6.10.74 Order Rescheduling Hearing, dated.

6.10.74 Respondent's Answer, dated.

7.25.74 Order Rescheduling Hearing, dated.

8. 2.74 Order Rescheduling Hearing, dated.

8.15.74 Order, dated.

8.30.74 Opposition to Respondent's Motion for Particulars, dated.

9.11.74 Hearing opened.

10.22.74 Stipulation, dated.

10.29.74 Hearing closed.

12.27.74 Administrative Law Judge's Decision, dated.

1.17.75 Charging Party's Exceptions to the Decision of the Administrative Law Judge, received.

1.20.75 General Counsel's Exceptions to the Decision of the Administrative Law Judge, received.

1.21.75 Party to the Contract's application for extension of time to file brief, dated.

1.22.75 Letter from Charging Party objecting to the request for extension of time to file brief, dated.

1.24.75 Board's telegram granting extension of time to file brief, dated.

7.30.75 Board's Decision and Order, dated.

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[Dated 12/27/74]

[JD-797-74  
Scarsdale, N.Y.]

\* \* \* \* \*

## DECISION

## Statement of the Case

MELVIN J. WELLES, Administrative Law Judge: This case was heard at Greensburgh, New York, and New York City, on various dates between September 11, 1974 and October 29, 1974, based on charges filed March 21, 1974, and amended June 5, 1974, and a complaint issued May 23, 1974, alleging that Respondent violated Section 8(a)(1) and (2) of the Act.<sup>1/</sup> Briefs have been filed by the General Counsel, the Respondent, and Local 999.

Upon the entire record in the case, including my observation of the witnesses, and upon consideration of briefs, I make the following:

## Findings of Fact

## I. The Business of the Employer and the Labor Organizations Involved

Respondent is a co-partnership, and is engaged in operating a nursing home and providing related services at its place of business at 77 Jackson Avenue, Scarsdale, New York. During the past year, Respondent received gross revenues in excess of \$500,000 and during the same period it purchased goods and services valued in excess of \$3,000 from points outside the State of New York. I find, as Respondent

<sup>1/</sup> The first 2 days of the hearing were conducted by Judge Joseph I. Nachman. When he became unavailable, the undersigned was assigned to the case. The parties agreed to accept the record already made, except for the testimony of two witnesses, whose testimony was stricken.



concedes, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The Charging Party, Local 1199, Drug and Hospital Union, RWDSU, AFL-CIO, herein called Local 1199, and the "Party of the Contract," Local 999, International Brotherhood of Teamsters, Cahuffeurs, Warehousemen and Helpers of America, herein called Local 999, are labor organizations within the meaning of Section 2(5) of the Act.

## II. The Issue and the Facts

The sole allegation in this case is that Respondent recognized and executed a contract with Local 999 at a time when Local 999 did not represent a majority of Respondent's employees. The facts show that after Local 999 requested recognition on the basis of an asserted majority of authorization cards, Respondent and Local 999 agreed that the cards would be submitted to an arbitrator and that his determination would be binding. The parties stipulated that 59 cards were submitted to the arbitrator, Joseph Frederick Wildebush,<sup>2/</sup> out of a "unit" of 101 employees, that, on February 20, 1974, Wildebush checked these cards against the Form W-4's submitted to him, rejecting two because they bore no signatures, and three because the signatures thereon were printed. On February 21, 1974, he issued a written determination that "the cards did in fact show that a majority of the employees desired representation," based on his examination of them, and stating also that "The similarity of signatures was verified to the best of his ability. This statement is made from his own observation, and not as a handwriting expert."

<sup>2/</sup> Wildebush is a member of the American Arbitration Association, the Federal Mediation & Conciliation Service, the New York State Board of Mediation, and the New Jersey State Board of Mediation.

Thereafter, Respondent and Local 999 executed a contract in a unit comprising 77 employees, 24 less than the number against which Arbitrator Wildebush checked the cards. The parties agreed that the General Counsel had the burden of proving "no majority" of both the 77 and the 101 figures, but obviously if the General Counsel carried the burden as to the 101, in the circumstances of this case, he would have carried it as to the 77 as well. There is no dispute as to the foregoing facts.

To prove that Local 999 did not represent a majority, the General Counsel presented the testimony of 70 witnesses, all employees of Respondent at the critical time, each of whom was asked whether she signed an authorization card for Local 999 or otherwise authorized Local 999 to represent him, to which questions, each responded that she had not. Actually, only 25 of these 70 witnesses took the stand, but the parties stipulated that the other 45 would each respond "no" to the two questions being asked. As I stated on the record, the fact that 45 of the witnesses did not testify orally could not, and will not, have any effect or bearing on my resolution of this case.

The only other pertinent facts are (1) that Local 999 no longer has the authorization cards submitted to the arbitrator, pursuant to its policy of not keeping cards once recognition and a contract are achieved, and (2) that Local 999 did in fact have two representatives at Respondent's nursing home on three occasions, passing out and soliciting signatures on cards. According to Union Agent Anthony DeFranco, he and the other union agent obtained from 12 to 15 cards in person, and the rest were sent to them by mail.<sup>3/</sup>

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<sup>3/</sup> The General Counsel in his brief asserts that the testimony of Union Organizer DeFranco discloses that he and another organizer, Yannucci, only spoke with about 45 employees.



Viewed simplistically, and that is the way the General Counsel views this case,<sup>4/</sup> the fact that 70 witnesses testified that they did not sign authorization cards for Local 999 or in any other manner authorize Local 999 to represent them establishes, unless at least 20 of these witnesses are discredited, that Local 999 did not represent a majority of Respondent's 101 employees on February 21, when arbitrator Wildebush checked the cards, or on February 22, when Respondent recognized Local 999 and signed a contract with it. In that posture, the conclusion that Respondent violated Section 8(a) (1) and (2) of the Act by recognizing a minority union follows inescapably under *Bernhard Altmann (ILGWU v. N.L.R.B.)*, 366 U.S., 731.<sup>5/</sup>

<sup>3/</sup> (Continued) I do not agree. DeFranco testified that the two organizers made three visits to the Company in which they handed out cards, following an initial visit when no cards were distributed. He gave numbers - totalling about 45 - with respect to the first two of these latter three visits, in response to the General Counsel's questions on cross-examination, but was not asked about the third. Nor did the numbers he gave purport to be more than rough estimates. There is thus no basis on the record for concluding that Local 999's organizers did not speak with or distribute cards to many more than the 45 employees the General Counsel claims the evidence shows.

<sup>4/</sup> No criticism is intended - the issue is difficult and the General Counsel's position may be correct.

<sup>5/</sup> The General Counsel in his brief adverts to testimony that the organizational activity by the Charging Party, Local 1199, at the Company, preceded the recognition of Local 999. The testimony concerning the activities of Local 1199 was very unclear, and I make no finding with respect to it, particularly because at the hearing the General Counsel explicitly agreed that "for purposes of this case, . . . it is as if 1199 never existed . . ." that his theory of the case was solely that "Local 999 did not have a majority," . . .

Stated otherwise, the General Counsel asserts that the only question before me is one of credibility, and further asserts that there is no conceivable basis for discrediting enough of its witnesses to bring the total of "non-signers" below 51.<sup>6/</sup>

Approaching the case from Respondent's and Local 999's point of view, however, could, just as simplistically, lead to the opposite conclusion. Thus, Respondent and Local 999 having agreed to submit the authorization cards to an arbitrator, who concluded that 54 out of the 101 were valid, they argue that Respondent was obliged to recognize Local 999 at that point, and did so in "good faith," and had it not done so, would have violated Section 8(a)(5) and (1) of the Act. Snow & Sons, 134 NLRB 709, enfd. 308 F.2d 687 (C.A. 9). And had Respondent attempted to challenge Arbitrator Wildebush's determination,

<sup>5/</sup> (Continued) "with no reference to the fact that 1199 was even on the scene." The General Counsel having taken this theory out of the case, I would not consider it even were the evidence referred to by the General Counsel clearly supportive of it.

<sup>6/</sup> I agree that "discrediting" is not a feasible method of resolving this case, and for that reason not only accepted the stipulation that 45 witnesses need not be called as they would testify the same as the 25 who were called, but strongly urged it upon a somewhat reluctant General Counsel. For "discrediting" any particular witnesses on demeanor would not establish that the particular witnesses did sign a card. As to the 25 who testified in person, some were cross-examined extensively by Respondent and by Local 999. Although, as to a few of them it might be said that elements of their testimony on cross-examination suggested a lack of candor, the bulk of them were either not cross-examined at all, leaving the record as to them the same as with the 45 whose "testimony" was stipulated, or, having been cross-examined, did not evince any basis for discrediting them.



it would not have been permitted to do so. N.L.R.B. v. C & C Packing Co., 405 F.2d 933 (C.A. 9).

### III. Discussion

Assuming arguendo that the General Counsel did "prove" that Local 999 did not represent a majority of Respondent's employees, so as to bring into play the principle of Bernhard-Altman, that does not end the matter. For a number of other principles stemming from the statute, and from Board and Court law interpreting the statute, seem, in the circumstances of this case, to conflict with the principles of Bernhard-Altman. To begin with, Snow & Sons, as Local 999 and Respondent correctly state, does provide that a company violates Section 8(a)(5) of the Act if it reneges on an agreement to recognize a union if an arbitrator determines that union represents a majority of his employees. And C & C Packing, supra, does preclude a company from challenging the determination of majority by the arbitrator. The Snow & Sons principle, as amplified by C & C Packing, is, in a sense, an outgrowth of Spielberg, 112 NLRB 1080, where the Board held, in effect, that it would not go behind the factual determinations of an arbitrator, and would therefore stay its own hand when an arbitration had been held, absent "fraud, collusion, unfairness, or serious procedural irregularities," or unless "the award was clearly repugnant to the purposes and policies of the Act." International Harvester Co., 138 NLRB 923, 127 enfd., sub nom Ramsey v. N.L.R.B., 327 F.2d 784 (C.A. 7), cert. denied, 377 U.S. 1003.

It is true that Snow & Sons and its progeny are based, in large part, at least, on estoppel grounds, on the theory, that is, that an employer cannot renege on his agreement, but that an outsider such as another union, or the employees themselves, are free to attack the recognition by conventional means, and for an appropriate period.

(This "period" would be within 6 months of the recognition, for Section 10(b) would preclude any attack thereafter.) It is also true that the employer's "good faith" in recognizing Local 999 would not, in and of itself, preclude the applicability of Bernhard-Altman, as the Supreme Court explicitly stated therein.<sup>7/</sup>

And, with respect to Spielberg, the "arbitration" here may well not be the kind of arbitration contemplated therein by the Board, because there was no contractual relationship between Respondent and Local 999, and because the employees, whose rights are directly involved here, neither agreed to nor were represented at, the arbitration. The General Counsel also suggested at the hearing that its proof - 70 employees testifying that they did not sign a Local 999 authorization card - establishes a prima facie case of "fraud," in that it demonstrates that at most 31 of the 54 cards found valid by Arbitrator Wildebush were in fact valid, ergo, that there must have been 23 invalid cards and therefore Local 999 did in fact perpetrate a "fraud" upon the arbitrator.

There is much to be said for each of these opposing arguments. The principles espoused in the various arguments seem to clash head on, which would not be true if either was without plausibility or merit.<sup>8/</sup> Having said this, however, does not quite answer the question before me, which of the two arguments should prevail, and whether other considerations, some practical, and some policy,

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<sup>7/</sup> The General Counsel does not contest Respondent's "good faith," and he agreed at the hearing that, with nothing more, Respondent would have violated Section 8(a)(5) by declining to recognize Local 999 after Wildebush's decision.

<sup>8/</sup> Arguably, if the arguments on each side were in precise equilibrium, Respondent would prevail, on the theory that the General Counsel carried the burden of establishing a violation.



including the fact that the authorization cards presented to Mr. Wildebush no longer exist, should tip the scales one way or another.

Although I realize that many things turn on a "matter of degree," for purposes of determining the legal issues in this case, I propound the following hypothetical, which differs from the instant case only in degree.

Suppose, for example, the General Counsel, in a case otherwise identical to this, presented 51 witnesses who testified they did not sign cards, whereas the arbitrator had found that the union had 51 valid cards out of 101 employees. Without knowing (as we do not know here) which 51 employees purportedly signed cards, there is of course no necessary conflict between 50 of the witnesses and the arbitrator's conclusions with respect to 50 of the cards. If all 51 witnesses are telling the truth, then either one of the 51 cards must have been a forgery, or the arbitrator's mathematics were faulty.

If the arbitrator's count was correct, and there were no forgeries, then one of the witnesses must have been mistaken; he may have lied, or forgotten, or just not understood. The difficulty in resolving that hypothetical case is obvious, for there is no one-to-one conflict in the evidence; there is no single individual, that is, whose card is in evidence and who testifies he did not sign it. The conflict lies solely in the totals. For an 8(a)(2) violation to be found, it is necessary to credit all 51 witnesses, and conclude that one of the cards was therefore invalid. Conversely, for the union to have had a valid majority, it is only necessary to discredit one of the witnesses - for fifty no "votes" creates no conflict with the fifty-one yes "votes." But on what basis could I discredit one out of the 51 witnesses? How could I single out one of the 51 and conclude that this is the one that is lying, or has forgotten, or did not understand? The answer is obvious; I could not. See footnote 6 supra.

Although the numbers are different in the case at bar, the problem is the same. For fifty of the General Counsel's witnesses could be telling the truth, could be correct in testifying that they did not sign cards, without destroying the Union's majority. But if any number from 51 through 70 are correct, then the Union did not have a majority, and either from 4 to 31 of the cards found valid by Arbitrator Wildebush were invalid, or the arbitrator miscounted to that extent.

In the hypothetical, it is possible to reason that the likelihood of one forgery, or the arbitrator having miscounted, is probably less than that of one employee forgetting, or not understanding, or even lying. And I would think, in those circumstances, the policy of giving credence to an arbitrator's determination and of permitting a method chosen by the parties to resolve the question concerning representation raised by the Union's demand for recognition should prevail over the possibility that a union one short of majority status in a unit of this size might be entrenched for as long as three years. With the larger numbers here present, it is hard to say that the same reasoning applies. That 20 employees are lying or mistaken, or have misunderstood, is much less likely than that one would. But that twenty cards were forged is also much less likely than that one was.<sup>9/</sup>

To dismiss the 8(a)(2) complaint here because of the difficulty of deciding the factual question whether the union represented a majority would leave Local 999 as the exclusive representation of the employees, at least until they, or another union, could appropriately (under Board representation case law principles) file a decertification or representation petition, respectively, and might be keeping a

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<sup>9/</sup> With the arbitrator having found 54 valid authorizations, the probability of his miscounting is virtually nil.



union that did not have a majority as the employees' representative. But that, in my opinion, should not shock the conscience. Thus, as far back as 1946 the Supreme Court, in N.L.R.B. v. A. J. Tower Company, 329 U.S. 324, refused to permit untimely challenges in a Board election even though the result of the election may well have been different had the late challenge been permitted, as it was based on the allegation that the voter in question was not even an employee of the company. Thus, employee rights are often dependent to some extent on employers, unions, and the following of procedural rules, including ad hoc rules adopted by agreement between the parties. It is true that Tower involved Board rules and procedures governing Board-conducted elections, and in that sense this case is quite different. But in Tower, unlike here, the question of majority raised by the employer was susceptible to easy resolution, had such resolution been permitted, and did not present the kind of difficulty that exists here because of the lack of any one-to-one conflict. Furthermore, other Board principles, that of Snow & Sons, supra, and Spielberg, supra, are at least analogous to the Board procedures in representation cases that the Supreme Court held controlling in Tower in rejecting the employer's right to show that the union did not have a majority. Indeed, recognition of a union that represented no one at all could not, because of Section 10(b) of the Act, be attacked after 6 months had gone by. Bryan Mfg. Co. v. N.L.R.B., 362 U.S. 411. It is true that this latter invulnerability is statutorily mandated. But the A. J. Tower and C & C Packing Co. cases were not, yet the possibility of imposing a minority union upon the employees in those cases was, as already noted, not considered significant enough to warrant going behind Board procedures, or those agreed to by the parties.

In sum, the combination of reasons, stemming from cases such as Snow & Sons, C & C Packing, A. J. Tower, and Spielberg, that favor setting to rest, and not permitting an attack upon, the relationship established here following Arbitrator Wildebush's determination, are, in my opinion, more compelling than the reasons advanced for ignoring all these factors, and adopting the simplistic approach of having the 70 not-discredited witnesses carry the day. I do not, in short, regard the General Counsel's "mathematical proof" as the kind of evidence that suffices to overcome the arbitrator's determination that Local 999 had a majority consisting of valid cards.

It is true, as the General Counsel urges, that had Local 999 not destroyed the authorization cards after it had obtained recognition and a contract, we might have had the kind of one-to-one confrontation that would permit a more conventional resolution of this case. For in those circumstances, the General Counsel presumably would not be putting on witnesses comprising a majority of the employee complement to testify that they did not sign a card, but would prevail by putting on 4 witnesses to testify that their cards, 4 of the 54, were forged, providing, of course, they were believed.<sup>10/</sup>

Perhaps the Board could, and should, as Respondent's counsel suggested at the hearing, enunciate a rule applicable to all cases where recognition is obtained by authorization cards that the cards be kept for the 10(b) six-month period, at the peril of having such recognition attacked as unlawful by the kind of evidence proffered by the General Counsel here. But at the moment no such rule exists.

<sup>10/</sup> Obviously, in such circumstances, the cards themselves would have to be examined, perhaps handwriting experts called to testify, etc.



And the uncontroverted testimony of Local 999's business agent, to the effect that the Union does not, as a matter of policy, keep cards once recognition and a contract are obtained, serves to preclude any inference of chicanery or fraud in the destruction of the cards.

I fully realize, as the above discussion should make evident, that my conclusion here (if sustained by the Board and the Courts, of course) might be leaving Local 999 as the employees' bargaining representative despite the strong possibility that Local 999 did not represent a majority of them when it was recognized. But, aside from the fact that, as A. J. Tower suggests, that should not shock the conscience, a decision by me that Respondent here did violate Section 8(a)(2) would, for practical purposes, not achieve a different result, for by the time the case, in that posture, wended its way through the Board, the Court of Appeals, and the certiorari procedures of the Supreme Court, even assuming the General Counsel's position prevailed at every level, we would have approached the time when the union could be unseated, if that is the employees' desire, by conventional means.<sup>11/</sup>

This is not a simple case. And my conclusion has not been an easy one to reach. Balancing the conflicting policies that bear on the situation is a task, in the final analysis, for the Board. I can only present my views, for what benefit they may be to the Board, and indicate that to me the balance tips ever so slightly in favor of permitting the recognition by Respondent of Local 999, based on the arbitrator's determination, to stand, as against the

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<sup>11/</sup> To the extent that a majority of the employees might wish to escape from the contractual obligation to pay dues to Local 999, they could, of course, deauthorize the union from having a union shop.

testimony of the 70 witnesses who were presented by the General Counsel to testify that they did not authorize Local 999 to represent them.<sup>12/</sup> Accordingly, I conclude that the Respondent has not violated Section 8(a)(1) and (2) of the Act by recognizing and executing a contract with Local 999.

Accordingly, I issue the following recommended:<sup>13/</sup>

### ORDER

The complaint is dismissed in its entirety. Dated at Washington, D.C.

/s/ Melvin J. Welles  
 Melvin J. Welles  
 Administrative Law Judge

<sup>12/</sup> My determination is strictly limited to the precise circumstances of this case, and the kind of evidence presented by the General Counsel. Cases such as Hi-Temp, Inc., 203 NLRB No. 119, and Hunter Outdoor Products, 176 NLRB 449, cited by the General Counsel, are, in my view, distinguishable, for in each of those cases it was specifically established that particular cards counted toward the union's majority were invalid, because the specific individuals had signed cards for another union. In short, I am not holding that the Board cannot or should not ever go behind the means selected by the parties for determining majority representation. I conclude only that the presumption of regularity of the arbitrator's determination here has not been overcome by the General Counsel's parade of witnesses - by, that is, his "mathematical proof."

<sup>13/</sup> In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.



[Dated 7/30/75]

[D--980,  
Scarsdale, N. Y.]

\* \* \* \* \*

## DECISION AND ORDER

On December 27, 1974, Administrative Law Judge Melvin J. Welles issued the attached Decision in this proceeding. Thereafter, the General Counsel and the Charging Party filed exceptions and supporting briefs, and Teamsters Local 999, Party to the Contract with the Respondent, filed a reply brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

Unlike the Administrative Law Judge, we would find that the Respondent Employer violated Section 8(a)(1) and (2) of the Act by recognizing Teamsters Local 999 and Section 8(a)(3) of the Act by executing a collective-bargaining agreement containing a union-security provision with such Union at a time when it did not represent a majority of the employees in an appropriate unit.

The facts in the instant case, as set forth more fully in the Decision of the Administrative Law Judge herein, are not in dispute. Basically, they are as follows. Teamsters Local 999 allegedly obtained 12 to 15 authorization cards in person, and 44 to 47 such cards by mail, from the Employer's employees during mid-February 1974. After a demand for recognition by the Teamsters, the Respondent agreed to submit 59 authorization cards to an arbitrator on February 20, 1974, for a binding decision as to the majority status of the Teamsters among 101 employees of the Respondent. In a letter to the Teamsters and the Respondent, dated February 21, 1974,

the arbitrator chosen by these parties noted that he had compared the authorization cards with the employees' W--4 forms and that "the similarity of signatures was verified to the best of his ability . . . from his own observation, and not as a handwriting expert." After rejecting two unsigned cards and three cards with printed signatures, the arbitrator concluded that the cards showed that "a majority of the employees desired representation." Local 1199, RWDSU, which had conducted an organizational campaign among the Respondent's employees in early February 1974, was not a party to the card check.<sup>1/</sup> On February 22, 1974, the Respondent executed a union-security contract with the Teamsters for a unit of 77 employees. Thereafter, the Teamsters destroyed the authorization cards which had been returned to it by the arbitrator. To prove that Teamsters Local 999 did not represent a majority of the Respondent's employees at any pertinent time, the General Counsel at trial produced 70 witnesses who were all employed by the Respondent at the time the Respondent recognized and contracted with the Teamsters. Of the 70 employees, 25 testified on direct examination, subject to cross-examination, that they had never, in any manner, authorized Teamsters Local 999 to represent them. The parties stipulated that the other 45 employees to be called by the General Counsel would testify likewise. A breakdown of the employees who testified that they did not sign authorization cards is set forth below as to the recognition unit and as to the contract unit.

<sup>1/</sup> Our dissenting colleagues assert that we are interjecting a theory of contemporaneous organizing activity on the part of the Charging Party. Teamsters Local 999 allowed such theory to be a part of this case when it refused the General Counsel's offer to stipulate out of the record evidence which relates to this issue.



The Recognition Unit

<u>Classification</u>	<u>No. in Unit</u>	<u>No. of Nonsigners</u>
Kitchen	14	8
Physical Therapy Aide	1	1
Maintenance	5	5
Registered Nurses	14	2
LPN's	10	7
Nurses Aides	56	46
Recreational Aide	<u>1</u>	<u>1</u>
Totals	101	70

The Contract Unit

<u>Classification</u>	<u>No. in Unit</u>	<u>No. of Nonsigners</u>
Kitchen	14	8
Physical Therapy Aide	1	1
Maintenance	5	5
Nurses Aides	56	46
Recreational Aide	<u>1</u>	<u>1</u>
Totals	77	61

In dismissing the complaint herein the Administrative Law Judge rejected the General Counsel's "mathematical proof" provided by "70 not-discredited witnesses," because, in his view, this was "not the kind of evidence that suffices to overcome the arbitrator's determination that Teamsters Local 999 had a majority consisting of valid cards." In support of his conclusion, the Administrative Law Judge notes that the Respondent would have violated Section 8(a)(5) of the Act had it refused to recognize the Teamsters.<sup>2/</sup> However, as

<sup>2/</sup> The Administrative Law Judge cited N. L. R. B. v. C & C Packing Company, 405 F. 2d 935 (C.A. 9, 1969), in support of this proposition.

the Administrative Law Judge also notes, the Supreme Court held in Bernhard Altmann<sup>3/</sup> that an employer's "good faith" does not preclude a finding that the employer violated Section 8(a)(1) and (2) of the Act by recognizing a union which, in fact, represented only a minority of the employer's employees at the time of the union's demand for recognition.

In further support of his conclusion, the Administrative Law Judge notes that the Respondent was bound by its agreement to submit the authorization cards to an arbitrator, and that the arbitrator's subsequent decision as to majority status of the Teamsters could not, therefore, be challenged by the Respondent<sup>4/</sup> unless the decision was clearly repugnant to the purposes of the Act or unless there was a showing of fraud, collusion, unfairness, or serious procedural irregularities.<sup>5/</sup> As an additional comment concerning procedural matters, the Administrative Law Judge noted that the Board has not allowed a party to prove that a union was, in fact, a minority union where the party's failure to follow procedural rules precluded such proof.<sup>6/</sup> In this regard, the Administrative Law Judge stated

<sup>3/</sup> International Ladies' Garment Workers' Union, AFL--CIO v. Bernhard Altmann Texas Corp., 366 U.S. 731 (1961).

<sup>4/</sup> The Administrative Law Judge cited Fred Snow, Harold Snow and Tom Snow d/b/a Snow & Sons, 134 NLRB 709 (1961), enfd. 308 F.2d 687 (C.A. 9, 1962), in support of this proposition.

<sup>5/</sup> The Administrative Law Judge cited Spielberg Manufacturing Company, 112 NLRB 1080 (1955), and International Harvester Company (Indianapolis Works), 138 NLRB 923 (1962), enfd. sub nom. Thomas D. Ramsey v. N.L.R.B., 327 F.2d 784 (C.A. 7, 1964), cert. denied 377 U.S. 1003 (1964), in support of this proposition.

<sup>6/</sup> The Administrative Law Judge cited N.L.R.B. v. A. J. Tower Company, 329 U.S. 324 (1946).



that "employee rights are often dependent to some extent on employers, unions, and the following of procedural rules, including ad hoc rules adopted by agreement between the parties." In other words, the Administrative Law Judge seems to be saying that, once the Respondent and Teamsters adopted ad hoc rules and procedures to resolve the question of the Teamsters majority status, the Respondent's employees were bound by such rules and procedures so that no challenge to the Teamsters alleged majority status could be made.

However, as the Administrative Law Judge noted, the Board's deferral to an arbitrator's card count is, in large part, based upon theories of contract or estoppel. Such theories are irrelevant to a third party such as Local 1199, RWDSU, which was not a party to the card-check agreement between the Respondent and the Teamsters, and this is especially so when, as here, the arbitrator fails to inquire into the circumstances surrounding the alleged signing of the cards or into the possible presence of another union or unions upon the scene.<sup>7/</sup> Moreover, as the Administrative Law Judge noted, the Board in several cases has held that it is not bound by a neutral party's authorization card count where it was shown that particular cards which were counted toward a union's majority status were, in fact, invalid.<sup>8/</sup> It is true that in the case at bar no authorization cards exist which would allow a direct affirmance or denial by each employee as to whether he or she signed a particular card. Such

<sup>7/</sup> Hunter Outdoor Products, Inc., 176 NLRB 449 (1969), enfd. 440 F.2d 876 (C.A. 1, 1971); Allied Supermarkets, Inc. --- Allied Discount Foods Division, 169 NLRB 927 (1968).

<sup>8/</sup> The Administrative Law Judge cited Hi Temp Inc., A Division of Beatrice Foods, Co., 203 NLRB No. 119 (1973), 503 F.2d 583 (C.A. 7, 1974); and Hunter Outdoor Products, supra.

conventional proof is not available here because the cards in question were destroyed by Teamsters, Local 999.<sup>9/</sup> Nonetheless, in presenting 70 employees who were willing to testify and be subjected to cross-examination as to whether they authorized the Teamsters to represent them, the General Counsel presented the best objective evidence available as to the validity of the cards in question and presented the same type of evidence which has consistently been accepted by the Board as proof as to the lack of majority status on the part of a union.<sup>10/</sup> We are unable to see how the arbitration, to

<sup>9/</sup> Member Kennedy also notes the Board's holding in Sunbeam Corporation, 99 NLRB 546, 550 (1952), where the Board stated:

This Board has also long recognized that authorization cards are a notoriously unreliable method of determining majority status of a union as a basis for making a contract where competing unions are soliciting cards, because of the duplications which then occur.

Moreover, Member Kennedy points to the remarks made by former Chairman Frank W. McCulloch in a speech delivered on October 28, 1965, to the Texas Manufacturers Association entitled, "The Policy, the Purpose and the Philosophy of the NLRB as Revealed in Decision Trends," wherein the former Chairman stated:

There has been a spate of comment too about the reliance upon authorization cards to establish a union's majority. Now everyone knows, and my public assertions to that effect have been cited far and wide, that honest and free elections are a better test of employee choice than authorization cards, with all their known frailties.

<sup>10/</sup> Cf. Wallace Metal Products, Inc., 199 NLRB 819, 827 (1972); Dixie Cup, Division of American Can Company, 157 NLRB 167 (1966); Trend Mills, Inc., 154 NLRB 143, 144 (1965); Imco Container Company of Harrisonburg, a Division of Consolidated Thermo-Plastics Company, 148 NLRB 312, 314 (1964); Hudson Dispatch, 68 NLRB 115, 117 (1946).



which the competing union and the individual employees were not parties, can bar our consideration of such evidence here, even though the Employer might be estopped from raising the issue.

Based upon the foregoing, we would find that the General Counsel has made out a prima facie case that neither a majority of the Respondent's employees in the recognized unit nor a majority of the Respondent's employees in the contract unit authorized Teamsters, Local 999, to represent them; that the burden therefore shifts to the Respondent to come forward to establish majority status of the Teamsters; and that, in the absence of such proof by the Respondent, <sup>11/</sup> a violation of Section 8(a)(1), (2), and (3) of the

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<sup>11/</sup> We disagree with our dissenting colleagues' position which is, in effect, that the Respondent has refuted the General Counsel's prima facie case, by showing that the arbitrator was presented with 54 valid authorization cards, thus evidencing a majority status by the Teamsters among the Employer's bargaining unit employees. The parties executed a contract in a unit comprised of only 77 employees. Assuming that the 24 employees who were excluded from the unit all signed cards for the Teamsters, only 30 employees of the 54 Teamsters card signers remain. These 30 employees would not constitute a majority of employees in the contract unit of 77. Thus there has been no showing by the Teamsters that they represented a majority of employees in the contract unit of 77 testified, either in person or by stipulation, that they did not sign a Teamsters authorization card.

In addition, 70 employees of the Employer's total of 101 employees so testified. We are unable to perceive why our dissenting colleagues apparently credit the testimony of 11 of the 70 witnesses presented by the General Counsel, but do not credit the other 59 who testified that they signed no authorization card for the Teamsters. In any event, it is clear that to accept the result reached by our dissenting colleagues would be to preclude those most directly concerned, the employees involved, from effectively proving their actual desires as to union representation. In light of the Teamsters destruction of the authorization cards, the

Act occurred when the Respondent recognized Teamsters Local 999, and executed with it a collective-bargaining agreement containing a union-security provision at times when such Union did not represent a majority of the Respondent's employees in an appropriate unit. Accordingly, we would find the violations alleged and issue an appropriate order.<sup>12/</sup>

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Henry Book, William Russ and Robert Klein d/b/a Sprain Brook Manor, Scarsdale, New York, their agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Assisting or contributing support to Local 999, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by

11/ (Continued) testimony of individual employees as to whether they actually signed a Teamsters authorization card is the best objective evidence available as to the authenticity of the cards.

Chairman Murphy joins her colleagues in finding that, in the highly unusual circumstances of this case, the General Counsel has presented a *prima facie* case that the authorization cards relied on by Respondent in recognizing Teamsters were invalid. Hence, a violation of Sec. 8(a)(1), (2), and (3) by Respondent has been established. See *International Ladies' Garment Workers' Union, AFL--CIO [Bernard Altmann Texas Corp.] v. N.L.R.B.*, 366 U.S. 731 (1961). The Chairman wishes specifically to note, however, that the violation found may well have been innocently engaged in by the Employer, who appears merely to have accepted a card count made by a well-qualified arbitrator.

12/ See *The Drackett Company*, 207 NLRB No. 80 (1973).



recognizing such labor organization as the exclusive representative of any of its employees for the purpose of collective bargaining at a time when there exists a real question concerning representation, or when such labor organization does not represent the majority of employees in an appropriate unit, or in any other manner.

(b) Giving effect to, or in any manner enforcing, the collective-bargaining agreement executed with the aforesaid labor organization on, to wit, February 22, 1974, or to any modification, extension, renewal, or supplement thereto, or any superseding agreements, or to checkoff authorization cards executed pursuant to such agreements, unless and until said labor organization has been certified by the Board as the exclusive bargaining representative of such employees; provided, however, nothing herein shall require Respondent to vary or abandon any wage, hour, seniority, or other substantive features of its relations with its employees which have been established in the performance of such agreements or to prejudice the assertion by employees of any rights they may have thereunder.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement in conformity with Section 8(a)(3) of the Act, as amended.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from Local 999, International Brotherhood of Teamsters, Cahuffeurs, Warehousemen and Helpers of America, as the representative of its employees for the purpose of collective bargaining unless and until said labor organization has been duly certified by the Board as the exclusive representative of such employees.

(b) Reimburse all present and former employees for all initiation fees, dues, or other moneys paid or checked off since February 22, 1974, pursuant to any renewal, modification, or extension thereof, or pursuant to any checkoff authorizations executed before the date of compliance with this Order.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of reimbursement due under the terms of this Order.

(d) Post at its plant in Scarsdale, New York, copies of the attached notice marked "Appendix." <sup>13/</sup> Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

<sup>13/</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."



Dated, Washington, D.C., July 30, 1975.

Betty Southard Murphy, Chairman

Howard Jenkins, Jr., Member

Ralph E. Kennedy, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

D--9807

MEMBERS FANNING and PENELLO, dissenting:

We do not believe the General Counsel has met his burden of proving by a preponderance of the evidence that Respondent violated Section 8(a)(1), (2), and (3) by recognizing and bargaining with the Union.

The sole issue in this case is whether Respondent violated the Act by recognizing and bargaining with Teamsters Local 999 at a time when that Union allegedly had not been duly selected by the employees as their exclusive representative. The General Counsel alleged that Local 999 was not a majority representative and to prove that fact introduced the testimony of 70 employees who denied that they had signed authorization cards for Local 999 or had in any other manner authorized it to represent them.

Respondent presented evidence that, after Local 999<sup>14/</sup> requested recognition on the basis of a claimed majority of authorization cards, it and Local 999 agreed that the cards would be submitted to an arbitrator along with W--4 forms from the Respondent's personnel records which contained employee signatures, that the arbitrator would make a determination as to the Union's majority status, and that such determination would be binding on the parties, a standard and accepted arrangement approved by this Board and the courts on countless occasions.

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<sup>14/</sup> Local 999 produced evidence that two of its business agents visited Respondent's premise three times, passing out authorization cards to employees on two of those occasions, and that they obtained about 12 to 15 cards in person, and the rest were sent to them in the mail. Local 999 also explained that it no longer had the cards submitted to the arbitrator for it does not as a matter of policy keep such cards after recognition and a contract are achieved.



According to a stipulation of the parties to this case, 59 cards out of a unit of 101 employees were submitted to Arbitrator Wildebush<sup>15/</sup> who checked the cards against the W--4 forms, rejecting two because they bore no signatures and three because the signatures were printed, and issued a written determination that based on his observation of the similarity of signature "the cards did in fact show that a majority of employees desired representation." Upon receipt of the arbitrator's determination, Respondent recognized Local 999 and bargained for and executed a contract covering a unit of 77 employees.

We quite agree with our colleagues that the General Counsel's evidence established a prima facie case of lack of majority status on the part of Local 999, and that Respondent therefore had the burden of coming forward with evidence to explain away or refute that case. This, we believe, it has done.

Respondent's evidence is that the arbitrator was presented with cards from a majority of employees authorizing Local 999 to represent them for purposes of collective bargaining, which cards, he, an experienced and reputable arbitrator, found to bear the signatures of employees in the unit. That evidence at the very least suggests that the testimony of some of the employees, testimony neither credited nor discredited by my colleagues, nor by the Administrative Law Judge, was mistaken or based on faulty recollection. Conversely, it is of course possible that the arbitrator failed to detect invalid signatures, and that the employee testimony is entirely

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<sup>15/</sup> Joseph Frederick Wildebush is a member of the American Arbitration Association, the Federal Mediation and Conciliation Service, the New York State Board of Mediation, and the New Jersey State Board of Mediation.

accurate and reliable. As the Administrative Law Judge noted, there could have been forgery, on the one hand, or erroneous recollection or even false testimony, on the other hand. Either possibility is, however, entirely speculative, and, accepting all the testimony and evidence at face value, we believe the Respondent has met its burden of coming forth with evidence in refutation of the General Counsel's case.<sup>16/</sup> As the burden of proving his case by a

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<sup>16/</sup> The General Counsel conceded that his burden was to prove that Local 999 did not have a majority in either the unit of 101 employees for which recognition was demanded and received, or in the 77-employee unit for which a contract was signed. Obviously, if he had proven that a majority in the larger unit had not authorized Local 999 to represent them, he would have also carried his burden as to the smaller unit. Our colleagues, apparently accepting the view that Respondent has come forward with evidence in refutation of the General Counsel's prima facie case as to the larger unit, find that it has not done so in the smaller unit. They say that the 24 employees excluded from the larger unit may be assumed to be among the 54 for whom cards were presented to the arbitrator, leaving only 30 in that 77-employee unit as employees for whom cards were also presented. However, of the 70 employees presented by the General Counsel, the names of 11 do not appear on the stipulation setting forth the employees in the contract unit (four more names are similar to but not precisely the same as those of employees who testified that they did not sign cards). Thus, the testimony of at least 11 employees who are stipulated to be part of the 101-employee unit but not in the 77-employee unit is that they did not sign cards for Local 999. Accordingly, our colleagues' assumption that 24 of the 54 cards were signed by employees excluded from the 77-employee unit is contrary to the testimony they would otherwise accept as true. At best, they can assume that 13 of the employees excluded from the contract unit were among those employees for whom cards were presented to the arbitrator. Subtracting 13 from the 54 cards submitted to the arbitrator leaves 41 cards from employees in the 77-employee contract unit. The situation is thus the same for both units. The General Counsel has presented



preponderance of the evidence always remained with the General Counsel<sup>17/</sup> and we do not believe his evidence preponderates in favor of finding that Local 999 was a minority union at the time it was recognized by Respondent unless one indulges in impermissible speculation, speculation, for example, that Local 999 perpetuated a fraud upon the arbitrator, we would dismiss the complaint.<sup>18/</sup>

It seems to us that henceforth any employer who accepts an arbitrator's or neutral third party's decision with respect to the majority status of a union will act at his peril. Dated, Washington, D.C. July 30, 1975.

John H. Fanning, Member

John A. Penello, Member  
NATIONAL LABOR RELATIONS BOARD

<sup>16/</sup> (Continued) testimony from a majority of employees denying they had signed authorization cards for Local 999. Respondent has introduced evidence that an arbitrator was presented with cards from a majority of unit employees which he found to be valid cards.

<sup>17/</sup> The General Counsel has not attacked the competency of the arbitrator to determine the issue submitted to him by the parties. Indeed, he specifically disclaimed any reliance upon a theory that contemporaneous organizing activity by the Charging Party made it improper for the Respondent and Local 999 to resolve the question of representation without the participation of the Charging Party. His sole theory is "that Local 999 did not have a majority." Our colleagues, however, seek to interject that issue into the case. The Charging Party filed its charge a month after the events in issue.

<sup>18/</sup> It is of course possible, but not proven, that dismissal of the complaint would impose a union not selected by the employees as their representative. However, they have the right to deauthorize any membership obligation which may be included in the contract and to vote the union out at the end of the contract if they are dissatisfied with the representation they have been given.

## APPENDIX

## NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

WE WILL NOT assist or contribute support to Local 999, International Brotherhood of Teamsters, Cahuffeurs, Warehousemen and Helpers of America, or any other labor organization, by recognizing or contracting with such labor organization as the exclusive representative of our employees for the purpose of collective bargaining, at a time when there exists a real question concerning representation, or when such labor organization does not represent a majority of our employees in an appropriate bargaining unit, or in any other manner.

WE WILL NOT give effect to our February 22, 1974, agreement with Local 999, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or to any renewal, modification, or extension thereof, unless and until said labor organization has been duly certified by the Board as the exclusive representative of our employees; but nothing herein shall be construed to require that we vary or abandon any existing term or condition of employment.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as amended.

WE WILL withdraw and withhold all recognition from Local 999, International Brotherhood of Teamsters, Chauffeurs, Warehousemen



and Helpers of America, as the collective-bargaining representative of our employees, unless and until said labor organization has been certified as such by the Board.

WE WILL reimburse all present and former employees, with interest, for any initiation fees, dues, or other moneys paid or checked off on and after February 22, 1974, pursuant to the agreement with Local 999, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or to any renewal, modification, or extension thereof.

HENRY BOOK, WILLIAM RUSS  
AND ROBERT KLEIN d/b/a  
SPRAIN BROOK MANOR  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 36th Floor, Federal Building, 26 Federal Plaza, New York, New York 10007, Telephone 212--264--0300.

## GENERAL COUNSEL'S EXHIBIT NO. 1(f)

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COMPLAINT AND NOTICE OF HEARING

It having been charged by Local 1199, Drug and Hospital Union, RWDSU, AFL-CIO, herein called the Charging Party, that Henry Book, William Russ and Robert Klein d/b/a Sprain Brook Manor, herein called Respondent, has engaged in, and is engaging, in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director, Region 2, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations - Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The Charge in this proceeding was filed by the Charging Party on March 21, 1974, and served by registered mail upon Respondent on or about March 21, 1974, and upon Local 999, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America herein called Local 999, on or about May 16, 1974.

2.(a) Respondent is a co-partnership composed of Henry Book, William Russ and Robert Klein, copartners, doing business under the trade name and style of Sprain Brook Manor.

(b) At all times material herein, Respondent has maintained an office and place of business at 77 Jackson Avenue, in the Village of Scarsdale and State of New York, herein called the Manor, where it is, and has been at all times material herein, engaged in operating a nursing home and providing related services.



(c) During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its operations, derived gross revenues therefrom in excess of \$500,000.

(d) During the same period Respondent purchased goods and services valued in excess of \$3,000 directly from firms located outside New York State.

3. Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4.(a) The Charging Party is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

(b) Local 999 is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

5.(a) On or about February 22, 1974 the Respondent and Local 999 executed, and since that date, have maintained and enforced a collective bargaining agreement relating to hire, tenure, terms and conditions of employment of the service employees, aides, orderlies maintenance, housekeeping, dietary employees of the Respondent at the Manor, in which agreement the Respondent is designated as "Employer" and Local 999 as the "Union".

(b) Said agreement contains, inter alia, the following provision:

"All present employees who are members of the Union shall continue to be members of the Union in good standing as a condition of employment. All present employees who are not members of the Union, and all future employees shall after a 30 days period

following the effective date of this contract or from the date of their hire become and remain members of the Union in good standing as a condition of employment."

6. Respondent and Local 999 executed and maintained in effect and enforced the agreement described above in paragraph 5, notwithstanding the fact that at the time of the execution of said agreement, Local 999 did not represent a majority of the employees in the unit described above.

7. On or about April 29, 1974, Respondent, by Henry Book a partner, and its agent, informed employees that they were required to become members of Local 999 as a condition of employment with the Respondent.

8. On or about April 29, 1974, Henry Book, a co-partner and agent of Respondent threatened to discharge its employees if they refused to join and assist Local 999.

9. By the acts described above in paragraphs 5 through 8, and by each of said acts, the Respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

10. By the acts described above in paragraphs 5 through 8, and by each of said acts, the Respondent did render and is rendering unlawful assistance and support to a labor organization, and contributing financial and other support to a labor organization, and



thereby did engage in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(2) and Section 2(6) and (7) of the Act.

11. The acts of the Respondent described above in paragraphs 5 through 8 occurring in connection with the operations of the Respondent described above in paragraphs 2 and 3, have a close, intimate, and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 25th day of June 1974, at 11:00 a.m., at 26 Federal Plaza, Room 3614, New York, New York a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, Region 2, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Complaint within ten (10) days from the service thereof, and that unless it does so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at New York, New York this 23rd day of May 1974.

/s/ Sidney Danielson  
Sidney Danielson, Regional Director  
National Labor Relations Board,  
Region 2, 26 Federal Plaza, Room 3614  
New York, New York 10007

## National Labor Relations Board

## NOTICE

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements will not be granted unless good and sufficient grounds are shown and the following requirements are met:

- (1) The request must be in writing. An original and two copies must be served on the Regional Director;
- (2) Grounds therefor must be set forth in detail;
- (3) Alternative dates for any rescheduled hearing must be given.
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Sprainbrook Manor Nursing Home  
77 Jackson Ave.  
Scarsdale, N. Y.



Local 1199, Drug and Hospital Union, RWDSU, AFL-CIO  
 Att: Mr. Ed Eppse  
 310 W. 43rd St.  
 New York, N.Y. 10036

Local 999, IBT  
 27 Chaurch St.  
 Paterson, N.J. 07505  
 Att: Larry DeAngelis

Burt Horowitz, Esq.  
 715 Park Ave.  
 E. Orange, N.Y. 10719

Local 1199, Drug and Hospital Union  
 Att: Harry Weinstock, Esq.  
 310 W. 43rd Street  
 New York, N.Y. 10036

Craner, Brennan and Nelson  
 1143 E. Jersey St.  
 Elizabeth, N.J. 07201

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\* \* \* \* \*

Pursuant to Sec. 10 (b) of the National Labor Relations Act and Sec. 102.20 of the Board's Rules and Regulations, Series 8 as amended, the respondent hereby files this Answer to the Complaint issued in the above entitled matter on May 23, 1974, as follows:

1. Respondent denies the allegations of paragraphs 6., 7., 8., 8., 10. and 11, except that it admits receipt of a Charge.
2. Respondent admits the allegations in paragraphs 1., 2. (a), (b), (c), (d), 3., 4. (a), (b), 5(a), (b).

/s/ Burton R. Horowitz  
Burton R. Horowitz  
Counsel for Respondent  
715 Park Avenue  
East Orange, N.J. 07017

Dated: May 28, 1974



## GENERAL COUNSEL'S EXHIBIT NO. 1(i)

\* \* \* \* \*

ANSWER TO COMPLAINT ON BEHALF OF LOCAL 999, I.B. of T.

Local 999, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, having its principal office at 27 Church Street, Paterson, New Jersey, in answer to the Complaint filed against it by the General Counsel of the National Labor Relations Board, says that:

1. It admits the allegations of Paragraph 1 of the Complaint.
2. With respect to the allegations of Paragraph 2(a), (b), (c) and (d), it has no information sufficient to form a belief as to the truth of said allegations and therefore neither admits nor denies same but leaves complainant to its proof.
3. It admits the allegations of Paragraph 3.
4. It admits the allegations of Paragraph 4(a) and (b).
5. It admits the allegations of Paragraph 5(a) and (b).
6. It admits that the agreement referred to in Paragraph 5(b) was maintained in effect and enforced at all times, but denies the remaining allegations of Paragraph 6, namely, that Local 999 did not at the time of the execution of said agreement represent a majority of the employees in the appropriate unit aforesaid.
7. It has no information sufficient to form a belief as to the allegations of Paragraph 7, and, therefore, neither admits nor denies same but leaves the complainant to its proof.
8. It has no information sufficient to form a belief as to the allegations of Paragraph 8, and neither admits nor denies same, but leaves complainant to its proof.

9. It denies the allegations of Paragraph 9.
10. It denies the allegations of Paragraph 10.
11. It denies the allegations of Paragraph 11.

WHEREFORE, respondent, Local 999, I.B. of T., demands judgment dismissing the Complaint.

CRANER, BRENNAN & NELSON  
Attorneys for Local 999, I.B. of T.

BY /s/ John A. Craner  
JOHN A. CRANER

DATED: May 31, 1974.

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## GENERAL COUNSEL'S EXHIBIT NO. 3

## AGREEMENT

AGREEMENT, made this 22nd day of February 1974, by and between Local 999 an affiliate of INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and SPRAIN BROOK MANOR HOME, SCARSDALE, N. Y.

1. The Employer recognizes Teamster Local 999 Union as the sole collective bargaining agent for all service employees, aides orderlies, maintenance, housekeeping, dietary employees, excluding R.N., L.P.M., office clerical and supervisors according to the Act 1947, located at 77 Jackson Avenue, Scarsdale, N. Y.

2. All present employees who are members of the Union shall continue to be members of the Union in good standing as a condition of employment. All present employees who are not members of the Union, and all future employees shall after a 30 days period following the effective date of this contract or from the date of their hire become and remain members of the Union in good standing as a condition of employment.

3. The work week shall consist of 5 days, each work day being an 8 hour day, three (3) shifts 7:00 A.M., to 3:00 P.M., 3:00 P.M., to 11:00 P.M., 11:00 P.M. to 7:00 A.M.

4. Overtime at the rate of time and one-half shall be paid after 8 hours in any day and over 40 hours in any work week.

5. All condition of employment presently in existence shall continue for the life of this agreement.

6. Wages - Thirty (30 days after the signing of the Agreement, a 5.5% increase for all employees who are on the active payroll.

The Union shall have the right to reopen this contract with respect to wages on the first and second anniversary of this agreement, upon 48 hours notice in writing to the employer.

7. The employer agrees to contribute to a Severance Fund the sum of \$8.67 per month for each employee covered by this agreement.

8. The employer agrees to negotiate with the Union all non-economic items within sixty (60) days, from the date of this agreement.

All non economic items not agreed to will be submitted to A.A.A. for arbitration.

9. The contract shall be for a term of three (3) years, Expiration date February 21, 1977.

SPRAIN BROOK MANOR NURSING HOME

---

/s/ Henry Book

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Local 999 an affiliate of INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, WARE-  
HOUSEMEN CHAUFFEURS AND HELPERS  
OF AMERICA,

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/s/ Larry De Angelis, Sec. -Treas.

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GENERAL COUNSEL'S EXHIBIT NO. 4

JOSEPH FREDERICK WILDEBUSH  
150 Hinchman Avenue  
Wayne, New Jersey 07470  
(201) 271-6400

February 21, 1974

Burton R. Horowitz, Esq.  
715 Park Avenue  
East Orange, N.J. 07019

Mr. Larry De Angelis  
Sec. -Treas., Local #999, I.B.T.  
27 Church Street  
Paterson, N.J. 07505

Re: Card Check  
Sprain Brook Manor  
-and-  
Local #999, I.B.T.

Gentlemen:

The undersigned, a member of the Panel of Arbitrators of the American Arbitration Association and other labor arbitration tribunals, hereby certifies the following:

1) That on February 20, 1974 he did conduct a card check at the offices of the New Jersey State Board of Mediation, 1100 Raymond Boulevard, Newark, N.J., to determine whether signed Union cards represented a majority of Registered Nurses, Licensed Practical Nurses, Nurses Aides, Kitchen Help, Maintenance Employees and Housekeeping Employees, employed by Sprain Brook Manor, 77 Jackson Avenue, Scarsdale, N.Y., who indicated a desire to be represented by Local #999, I.B.T.

2) He examined Union "membership cards" and "Form W-4, Employee's Withholding Exemption Certificates" for signature verification.

February 21, 1974

Page -2-

3. The similarity of signatures was verified to the best of his ability. This statement is made from his own observation, and not as a handwriting expert.

4) As the result of his examination, it was clearly determined that the cards did in fact show that a majority of the employees desired representation.

Very truly yours,

/s/ Joseph F. Wildebush  
Supervising Arbitrator

JFW/bc

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## GENERAL COUNSEL'S EXHIBIT NO. 9

\* \* \* \* \*

STIPULATION

IT HEREBY IS STIPULATED by and between the parties hereto that:

1. On February 20, 1974 Respondent Employer recognized Local 999, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter called Local 999, as the collective-bargaining representative of all the employees in the following described unit based upon a card count conducted by Joseph Wildebush, an arbitrator, on the same date in the same unit: Registered Nurses, Licensed Practical Nurses, Nurses Aides, Kitchen Help, Maintenance Employees and Housekeeping Employees employed by Sprain Brook Manor, 77 Jackson Avenue, Scarsdale, New York, consisting of 101 regularly employed employees within the classifications set forth above. Their names and classifications are set forth in Exhibit A attached hereto.
2. On February 22, 1974 Respondent Employer entered into a collective-bargaining agreement with Local 999, as the collective-bargaining representative of all the employees in the following described unit: All service employees, aides, orderlies, maintenance, housekeeping, dietary employees, excluding registered nurses, licensed practical nurses, office clerical employees, and supervisors within the meaning of the National Labor Relations Act, as amended, consisting of 77 individuals regularly employed by Respondent employer within the classifications set forth above. Their names and classifications are set forth in Exhibit B attached hereto.

This Stipulation is made without prejudice to the materiality or competency of any of the facts stated herein.

Dated: New York, New York  
October 22, 1974

/s/ Irwin M. Portnoy	10/22/74
Counsel for the General Counsel	Date

Counsel for Local 199 Drug & Hospital Union	Date
--	------

/s/ Burton Horowitz	10/22/74
Counsel for Henry Book, William Russ and Robert Klein d/b/a Sprain Brook Manor	Date

/s/ John A. Craner	10/22/74
Counsel for Local 999, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.	Date



EXHIBIT A

KITCHEN

Clark Poccia  
Irene Gruenfeld  
Michael Nesheiwat  
Amal Nesheiwat  
Patricia O'Neill  
Robert Tegtmeier  
Woody Davis  
Mary Murray  
Margaret Valenti  
Michael Fumai  
Donna DeGhetto  
Samuel A. Salala  
Christine Militana  
Betsy Crockston

PHYSICAL THERAPY AIDE

Thelma Cleveland

MAINTENANCE

Bartolo Radovanovich  
Angel Pita  
Florentino Vidal  
Ralph Ferraro  
Arnaldo Fernandez

RN

Mary Houston  
Patricia Steiner

RN (Continued)

Elizabeth W. Beattie  
Afaf Nesheiwat  
Theresa Mucikowsky  
Mary E. Onorato  
Sarah S. Marrello  
Jessie A. Smith  
Nancy C. DeLucia  
Julia B. McKinley  
Beatrice Gerace  
Kum Nam Chung  
Dorothy Johns  
Barbara Rusink

LPN'S

Wilma E. Ortiz  
Barbara Hichak  
Sybil Lewis  
Carol Ann Keindl  
Janice M. Brown  
Wendy Chiaro  
Carol J. O'Hara  
Mildred Brozman  
Josephine R. Olivet  
Dorothy F. Kennedy

NURSES AIDES

Joan Louisa Enea  
Marian Kochetta



NURSES AIDES (Continued)

Elizabeth Preston  
Lucy Towns  
Betty Jane Jones  
Marian Montgomery  
Margaret Mary Curran  
Lillian Thomas  
Regina DeGhetto  
Elizabeth Andersen  
Jacqueline Dwyer  
Dattres Lawrence  
Patricia M. Armstrong  
Lerie Lin Baker  
Panchita H. Lawson  
Bertha Toranzo  
Wilhelmina Kashi  
Larry Lockhart  
Maude Drachett  
Mavis West  
Mittie Ann Rice  
Rebecca Davis  
Joyce Sinclair  
Miriam Oramas  
Virginia Santiago  
Daphne V. Dawkins  
Doris Shields  
Rosario Masdiaz  
Fran Vetere  
Warren M. Kochetta

NURSES AIDES (Continued)

M. Delores Wright  
Emily S. Warren  
Willie Mae Shaw  
Maria Rivera  
Katherine Bellamy  
Mavis Elliot  
Tomasia Hernandez  
Raymond Nieves  
Edelmira Padron  
Carol A. Petrillo  
Joy Hayle  
Maria Vidal  
Gladys Johns  
Mattie Bell Shaw  
Alice Weir  
Kiomara Oramas  
Norma Rodriguez  
Kris Phillips  
Ethlin Stewart  
Michael Dwyer  
Alba DeStefano  
Nancy J. Roosa  
Hattie M. Bowen  
Myrtle Clark  
Loretta A. Jefferson  
Beryl Thompson

RECREATIONAL AIDE

Joyce Salmon



EXHIBIT BKITCHEN

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Irene Gruenfeld  
Michael Nesheiwat  
Amal Nesheiwat  
Patricia O'Neill  
Robert Tegtmeier  
Woody Davis  
Mary Murray  
Margaret Valenti  
Michael Fumai  
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Mittie Ann Rice  
Rebecca Davis  
Joyce Sinclair  
Miriam Oramas  
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Daphne V. Dawkins  
Doris Shields  
Rosario Masdiaz  
Fran Vetere  
Warren M. Kochetta  
M. Delores Wright



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Xiomara Oramas  
Norma Rodriguez  
Iris Phillips  
Ethlin Stewart  
Michael Dwyer  
Adlba DeStefano  
Nancy J. Roosa  
Hattie M. Bowen  
Myrtle Clark  
Loretta A. Jefferson  
Beryl Thompson

RECREATIONAL AIDE

Joyce Salmon

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## EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1

## BEFORE THE NATIONAL LABOR RELATIONS BOARD

## Second Region

\*\*\*\*\*

In the Matter of:

HENRY BOOK, WILLIAM RUSS AND  
ROBERT KLEIN d/b/a SPRAIN BROOK  
MANOR

and

LOCAL 1199, DRUG AND HOSPITAL  
UNION, R.W.D.S.U., AFL-CIO

and

LOCAL 999, INTERNATIONAL BROTHER-  
HOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF  
AMERICA.

\*\*\*\*\*

Case No. 2-CA-13257

At Court of Special Sessions,  
188 Tarrytown Road,  
Greenburgh, New York,  
Wed., September 11, 1974.The above-entitled matter came on for hearing, pursuant  
to notice, at 12:05 o'clock p.m.

## BEFORE:

Honorable JOSEPH I. NACHMAN, Administrative Law Judge

## APPEARANCES:

IRWIN M. PORTNOY, Esq.,

Appearing on behalf of Counsel  
for the General Counsel.CRANER, BRENNAN and  
NELSON, Esq.,By JOHN A. CRANER, Esq.,  
of Counsel, 1143 East Jersey  
Street, Elizabeth, New Jersey  
07201, appearing on behalf of  
Respondent.



APPEARANCES (Continued):

HOROWITZ & SCHWARTZ, Esq.,  
By BURTON HOROWITZ, Esq.,  
of Counsel. 715 Park Avenue,  
East Orange, New Jersey,  
appearing on behalf of the  
Employer.

By RICHARD DORN, Esq., of  
Counsel, 380 Madison Avenue,  
New York, New York, appearing  
on behalf of the Charging Party.

Interpreter.

ALSO PRESENT:

MR. MANLIO SEVERINO

\* \* \* \* \*

# PROCEEDINGS

JUDGE NACHMAN: The hearing will be in order, please.

This is a formal hearing before the National Labor Relations Board in the matter of Sprain Brook Manor Nursing Home, Case No. 2-CA-13257.

The Administrative Law Judge assigned to conduct this hearing is Joseph I. Nachman. The spelling is N-a-c-h-m-a-n.

I'll ask the parties to state their appearances for the record, please.

General Counsel, first.

MR. PORTNOY: Irwin, I-r-w-i-n, Portnoy, P-o-r-t-n-o-y.

JUDGE NACHMAN: For the Respondent, Local 999.

MR. CRANER: John A. Craner, law firm of Craner, Brennan and Nelson, Elizabeth, New Jersey.

JUDGE NACHMAN: For the Charging Party, Local 1199.

MR. DORN: Richard Dorn, Sipser, Weinstock, Harper  
& Dorn.

JUDGE NACHMAN: And the Respondent Company?

MR. HOROWITZ: Burton R. Horowitz of Horowitz &  
Schwartz, 715 Park Avenue, East Orange, New Jersey.

\* \* \* \* \*

109

OLGA VERA

having been previously sworn, resumed the stand and testified  
further, as follows:

MANUEL RAS

the interpreter, having been previously sworn to faithfully and  
truly translate the questions propounded to the witness from English  
into Spanish, and the answers given by the witness from Spanish into  
English, continued further, as follows:

\* \* \* \* \*

111

CROSS EXAMINATION

\* \* \* \* \*

112

Q. (By Mr. Craner) And in February of 1972, did you hear  
any talk around the Sprain Brook Manor premises from anyone about  
Local 999? Did I say 1973? I meant 1974. February of 1974.

A. About what?

Q. Did you hear any talk about Local 999 was trying to  
represent the employees of Sprain Brook Manor? A. Yes.

Q. Now, did you ever at any time hear any talk about Local  
1199 trying to organize the employees of Sprain Brook Manor? A. Yes.



I heard that days after I heard about this one that you had talked to me about.

Q. Now do you know how much time elapsed between the time you heard about Local 999 trying to organize the employees of Sprain Brook Manor and Local 1199 trying to organize the employees of Sprain Brook Manor?

MR. PORTNOY: Objection. This goes beyond direct.

JUDGE NACHMAN: Overruled.

113 A. Well, exactly I don't know, but must have gone since I heard of one union trying to organize and the other union trying to organize, must have gone two or three weeks.

Q. And just to clarify the situation, the first union you heard trying to organize was a Local 999? A. Yes.

\* \* \* \* \*

126

# MIRIAM ORAMAS

was called as a witness and, having been first duly sworn by Judge Nachman, testified as follows:

JUDGE NACHMAN (Through the interpreter): What is your name?

THE WITNESS: Miriam Oramas.

JUDGE NACHMAN: All right. Proceed.

## DIRECT EXAMINATION

\* \* \* \* \*

127

Q. (By Mr. Portnoy) And who do you work for, Miss Oramas?

A. The place where I work?

Q. Yes. A. Sprain Brook Manor.

Q. What kind of work do you do there? A. Sort of nurse's aide.

\* \* \* \* \*

Q. (By Mr. Portnoy) Miss Oramas, did you ever sign a card for Local 999, Teamsters? Ever? A. No.

\* \* \* \* \*

130a

Q. (By Mr. Portnoy) Miss Oramas, did you ever tell any of the bosses at the home that you wanted to have Local 999 Teamsters enter into a contract covering your employment?

MR. HOROWITZ: Objection.

\* \* \* \* \*

#### DIRECT EXAMINATION (Continued)

\* \* \* \* \*

131

A. No; I never talk about it.

Q. (By Mr. Portnoy) Okay.

Now, did Mr. Book ever speak to any of the employees in Local 999 Teamsters at a meeting of the employees, as far as you know? A. Well, I knew about a meeting in my job.

JUDGE NACHMAN: Did she attend?

A. (Continuing) But I was free that day. I was off. So I did not attend.

\* \* \* \* \*

132

#### CROSS EXAMINATION

\* \* \* \* \*

142

Q. (By Mr. Horowitz) Miss Oramas, did you have any meetings with any representatives of Local 999 in the month of February? A. No.



Q. Did any representative of Local 999 hand you a card for you to sign in the month of February 1974? A. No.

Q. Did you see any representative of Local 999 in the month of February 1974? A. I saw representatives but I don't know if it was February or March; I don't remember when it was.

Q. Was it before you signed a card for Local 1199?  
A. Before I sign the card, if I saw a representative of the Local 999, is that what you are asking me, sir.

Q. Yes. A. No.

\* \* \* \* \*

185

# XIOMARA ORAMAS

called as a witness, having been first duly sworn by Judge Nachman, was examined and testified as follows: (Through the Spanish interpreter.)

## DIRECT EXAMINATION

JUDGE NACHMAN: What is your name?

THE WITNESS: Xiomara Oramas.

JUDGE NACHMAN: All right.

\* \* \* \* \*

188

Q. (By Mr. Portnoy) \* \* \* Did you work for Sprain Brook Manor Nursing Home in February of this year, 1974? A. Yes. I started working there in September of 1973; yes, in February I was there.

Q. And what is your job? A. Nursing aide.

189

Q. And what were your hours? A. 7:00 to 3:00.

\* \* \* \* \*

Q. Did you sign a card for Local 999, International Brotherhood of Teamsters in which you authorized them to represent you with respect to bargaining with your boss about your wages and hours and other working conditions on your job?

A. No.

\* \* \* \* \*

191 Q. (By Mr. Portnoy) Now, did you ever tell any boss at the nursing home that Local 999 Teamsters represented you in your -- for the purposes of signing a contract with the nursing home covering your wages and your -- the other working conditions at the home? A. No.

Q. Did Mr. Book ever speak to the employees at a meeting in which Local 999 was mentioned, at which you were present?

192 JUDGE NACHMAN: I mean a meeting which she attended.

Q. Right. A meeting which you attended, employee meeting?

A. Yes.

Q. When was the date of that meeting? When did that meeting take place? A. I do not remember exactly what was the date.

Q. All right.

Was it before or after -- well, was it before or after you signed this card, General Counsel's Exhibit 8?

JUDGE NACHMAN: What is the date?

MR. PORTNOY: 2/74.

Q. About how long after, do you remember? A. Some months after. I do not remember, maybe two or three months, some months.

JUDGE NACHMAN: Two or three months after?

THE WITNESS: I do not know exactly, but it was some months after.



\* \* \* \* \*

193 CROSS EXAMINATION

\* \* \* \* \*

209 JUDGE NACHMAN: On the record.

In the course of the off-the-record discussion the parties  
agreed and now stipulate that the union submitted to Mr. Wildebush,  
210 the Arbitrator who wrote the letter of February 21, which is  
in evidence as GC -4 all the signed cards they had which consisted  
of 59 cards. Mr. Wildebush rejected two of those cards because  
they bore no signature, and three additional cards because the  
signature on them was printed.

The remaining 54 he concluded with valid cards and on the  
basis of that conclusion wrote his letter of February 21. Do the  
parties so stipulate?

Do you so stipulate, Mr. Portnoy?

MR. PORTNOY: Yes, sir.

JUDGE NACHMAN: Mr. Horowitz?

MR. HOROWITZ: Yes.

JUDGE NACHMAN: The stipulation is approved.

\* \* \* \* \*

223 CROSS EXAMINATION

\* \* \* \* \*

224 JUDGE NACHMAN: On the record.

In the course of the off-the-record discussion, the parties  
discussed and agreed and are now willing to stipulate that when the  
cards were submitted to Mr. Wildebush, the only thing that accompanied  
the cards were the W4 forms, nothing in the way of a payroll record  
was submitted other than those forms. Do you so stipulate, Mr. Portnoy?

MR. PORTNOY: Yes, Your Honor.

MR. CRANER: I agree.

MR. HOROWITZ: Yes, Your Honor.

JUDGE NACHMAN: Mr. Horowitz, so stipulated.

\* \* \* \* \*

225 Q. (By Mr. Horowitz) \* \* \* You have testified that  
226 attended a meeting with Mr. Book? A. Yes.

Q. When did it occur? A. After I signed the card.

Q. Did it occur -- could it have occurred on March 1st?

A. Could be; I'm not sure. Could be. More or less in March.

Q. It was in March? A. I believe so.

\* \* \* \* \*

256 MR. PORTNOY: I would suggest, Your Honor, that we put  
in evidence at this point these stipulations as General Counsel's  
Exhibit 9.

(Whereupon, above referred to  
documents were received and marked  
General Counsel's Exhibit 9 for  
identification.)

MR. PORTNOY: Your Honor, I move the admission of  
General Counsel's Exhibit 9.

MR. CRANER: That's with the understanding, sir, that Local  
1199 received notice of this hearing and they are not here and there-  
fore, they are waiving any objection that they might have to this  
stipulation.

JUDGE WELLES: Yes.

MR. CRANER: There is a signature form and I didn't want  
the record to show that they just refused it.

JUDGE WELLES: Do I correctly gather from this stip-  
ulation that the parties are in agreement that the appropriate



257

unit that you allege is appropriate and that the company recognizes the Respondent for consists of 77 individuals?

MR. CRANER: That's my understanding.

MR. HOROWITZ: Me too.

MR. PORTNOY: Intents of General Counsel's case appropriate unit is not really an issue for us.

Under the General Counsel's theory, what we have to prove is non-majority in the unit that was recognized by the Employer.

Since the date of recognition was on February 20th, the date of the card count, we have to prove non-majority in that unit regardless of whether or not that unit happens to be an appropriate unit.

JUDGE WELLES: It puzzles me a bit.

MR. CRANER: That's double talk.

MR. PORTNOY: There are cases that do talk in terms of the appropriateness of the unit, but in view of the fact that the cases do also say that non-majority is proven as of the time of recognition.

For all practical purposes we have to try and prove non-majority on February 20th.

MR. CRANER: It still have to be 77.

MR. PORTNOY: The unit on February 20th was 101 and it contained 24 additional employees than the contract unit.

258

JUDGE WELLES: In other words, the card count conducted by the Arbitrator was made against 101 employees and he found, as I read his letter -- not his letter, the colloquy or testimony I forget which for stipulation, there were 54 cards counted and 5 rejected for one reason or another by the Arbitrator so that 54 had to be judge against 101.

MR. CRANER: But, 77 ended up as the unit that was eventually bargained for in the contract.

JUDGE WELLES: I think 101 is the number we have to deal with in this case.

MR. PORTNOY: That is a two point stipulation.

There are two paragraphs in the stipulation.

Paragraph 1 relates to February 20th and Paragraph 2 relates to February 22nd.

JUDGE WELLES: And Paragraph 1 is the one that Exhibit A refers to and that contains 101, is that correct?

MR. PORTNOY: Yes, Your Honor.

JUDGE WELLES: All right, I understand that now.

So, you have to prove that at least 51 employees did not sign 999 cards to make your case?

MR. PORTNOY: Yes.

Now, I would also wish to point out that on February 22nd, the contract was signed in a smaller unit.

The contract is in evidence as General Counsel's Exhibit 3.

259

JUDGE WELLES: Supposing the contract unit is an appropriate unit under the Board Law and supposing they had a majority in that unit?

MR. PORTNOY: Local 999?

JUDGE WELLES: Yes.

MR. PORTNOY: That's a possibility that General Counsel will disprove.

General Counsel --

MR. CRANER: That's the issue of the case.

JUDGE WELLES: You would have the burden of showing they have no majority of the 101 or the 77.

MR. PORTNOY: We intend to prove non-majority on both dates, Your Honor.



JUDGE WELLES: Then, there are no more unit problems although there seem to be from my reading of the transcript, they seem to be up in the air.

We have agreed on numbers and unit inasfar as it's relevant and I understand your position on that.

General Counsel 9 is received in evidence.

(Whereupon, General Counsel's Exhibit 9, heretofore marked for identification, was received into evidence.)

MR. PORTNOY: Your Honor, at this point General Counsel would move to delete Paragraphs 7 and 8 of the Complaint.

260

Our reason for doing this is because Mr. Book has been suffering from illness and he would not have to be present to listen to the testimony which is involved in paragraphs 7 and 8 and this would, this might possibly necessitate for further adjournment.

We have had that situation in the past and in order to get this trial over with and moving, we would like to withdraw Paragraphs 7 and 8.

JUDGE WELLES: I needn't ask the Respondent their view to the deletion, but, how about the charging party's rights?

I know that they are not represented here today, but that does create a small problem.

MR. PORTNOY: I spoke to the Charging Party's attorney about this several days ago and explained my intentions and I also spoke to the Union business representative who is involved in the case and explained my intention with respect to that matter.

Neither of them voiced any objection to me. In the event that there is for some unforeseen reason any objection on their part I will notify you about it or I am sure that they will come in, but I don't foresee any.

JUDGE WELLES: Perhaps if you just don't present any proof on those issues, they would be dismissed in any event and with the Charging Party not represented he would not then be prejudiced, but he might be prejudiced by granting a withdrawal of the Complaint.

261

It amounts to the same thing, but I will grant the motion to delete those paragraphs.

MR. CRANER: Also number nine has to be amended to delete any reference to Paragraphs 7 and 8.

MR. PORTNOY: We will have to remember paragraphs 9 to 7 and 10 to 8.

We will have to remember Paragraph 11 as set forth in General Counsel's Exhibit 2 to Paragraph 9 and then renumber Paragraph 12 to Paragraph 10 in the Complaint.

JUDGE WELLES: I will just deem that done.

We don't have to go through any formalities.

The Complaint is hereby deemed amended, in all those respects including the 7 and 8 which were deleted.

MR. PORTNOY: At this point, I would like to withdraw from evidence General Counsel's Exhibit 7 and 8.

JUDGE WELLES: Those are the 1199 cards of the two witnesses?

MR. PORTNOY: Yes.

JUDGE WELLES: The motion is granted.

\* \* \* \* \*

262

JUDGE WELLES: My understanding would be that up to this point at least it looked as if Mr. Portnoy was trying to show by the signing of 1199 cards, activities of 1199 that there was some sort of organization activity going on abase with that of 1199 and therefore you have a conflict.



263 Now, by deleting all those references I take it you are no longer relying on any such theory, your sole theory at this point is that 999 did not have a majority and that's all you intend to show, not by the fact that they signed cards for 1199 and with no reference to the fact that 1199 was even on the scene, so, for purposes of this case, correct me if I am wrong, it is as if 1199 never existed as far as your theory is concerned, is that correct?

MR. PORTNOY: That's correct, Your Honor, \* \* \*

\* \* \* \* \*

266

# JOSEPHINE OLIVET

called as a witness, having been first duly sworn in by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

THE WITNESS: Josephine Olivet, 156 Midland Street, Yonkers, New York.

## DIRECT EXAMINATION

Q. (By Mr. Portnoy) What's your job, Mrs. Olivet?

A. I am a licensed practical nurse at Sprain Brook Manor Nursing Home.

Q. Did you ever sign a card for Local 999? A. No, sir.

Q. Did you ever authorize Local 999 to represent you in dealing with your employer for wages, hours and terms of working conditions? A. No.

\* \* \* \* \*

285

# WILLIE MAE SHAW

called as a witness, and having been first duly sworn in by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

THE WITNESS: Willie Mae Shaw, 1047 East 241st Street,  
Bronx, New York.

286

## DIRECT EXAMINATION

Q. (By Mr. Portnoy) Did you ever sign a card authorizing Local 999 to represent you for collective bargaining purposes with your Employer, Sprain Brook Manor? A. No, I never did sign the card.

Q. What is your job Mrs. Shaw? A. Nurses Aide.

Q. Did you in any other way authorize Local 999 Teamsters to represent you for collective bargaining purposes with your Employer with respect to wages, hours, terms and conditions of employment? A. I didn't get that.

Q. Did you in any other fashion besides signing a card, did you ever tell any of the supervisors or Mr. Book that you had signed a card for 999? A. No.

Q. Or that you had given your permission to 999 Teamsters to negotiate a contract covering your wages and hours and terms and conditions of employment? A. No.

\* \* \* \* \*

291

## EXAMINATION

Q. (By Mr. Horowitz) What shifts do you work on?  
A. Three to eleven.

Q. I'm sorry. A. Three to eleven.

Q. Did you ever attend a meeting with Local 999, either on the premises or off the premises during the month of February?  
A. No.



Q. 1974? A. No.

Q. How about March? A. There was a meeting once,  
but I forget the date.

Q. Could it have been February '74? A. I don't remember.

Q. I can't hear you? A. I don't remember.

292 Q. You don't remember when it was, was it in the last  
three months? A. No, I don't think so.

Q. If it wasn't in the last three months, was it in the first  
three months of '74? A. I don't remember what month it was in.

Q. Were there other employees present? A. Yes.

Q. Was anything passed out by Local 999 at that time?  
A. No, not any cards passed out.

Q. Was anything passed out, anything at all for you to read  
or for discussion? A. Yes, you did pass out a thing to be read,  
didn't you?

Q. Pardon? A. Didn't you pass out something for us  
to read?

Q. Me? A. Somebody from 999.

\* \* \* \* \*

297 Q. (By Mr. Horowitz) \* \* \* Now, what did I pass out to  
you as well as to the other employees? A. Did I say you, personally?

Q. Yes.

You said you passed out literature? A. I meant the guy  
that was there, I didn't speak of you personally.

\* \* \* \* \*

299 Q. Did 999 ever hand you anything other than the literature  
at this one meeting? A. No.

Q. Did they ever hand out cards to you? A. No.

Q. Did they ever ask you to sign anything? A. No.

Q. Could you have signed something for this union and not realized what you had signed? A. No.

Q. May you have authorized somebody to sign on your behalf? A. No.

Q. Have you ever seen a card from 999? A. No.

300 Q. Do you read your bulletin board? A. Not often.

Q. Did you read the bulletin board sometime in February at which time there was a recognition document put up on the bulletin board by the company? A. No.

\* \* \* \* \*

#### RECROSS EXAMINATION

Q. (By Mr. Craner) Do you know what papers were passed out at this meeting that Local 999 held? A. He said it was a contract.

Q. Do you remember when that meeting was? A. No, I don't remember.

Q. Was the meeting before or after you heard of Local 999? A. Long afterwards.

\* \* \* \* \*

302

#### DOLORES WRIGHT

called as a witness, having been first duly sworn in by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

THE WITNESS: Dolores Wright, 459 Dunham Avenue, Mt. Vernon, New York.



## DIRECT EXAMINATION

Q. (By Mr. Portnoy) What's your job Mrs. Wright?

A. Nurse's Aide.

Q. Mrs. Wright, did you ever sign a card for Local 999 Teamsters? A. No.

303 Q. Did you ever authorize in anyway Local 999 Teamsters to represent you in dealing with your employer, Sprain Brook, for wages, hours and terms and conditions of employment?  
A. No.

\* \* \* \* \*

311 EMILY WARREN

called as a witness, having been first duly sworn in by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

THE WITNESS: Emily Warren, 513 7th Avenue, Pelham, New York.

## DIRECT EXAMINATION

Q. (By Mr. Portnoy) Mrs. Warren, what's your job?

A. Sprain Brook Manor.

312 Q. What do you do there? A. Nurse's aide.

Q. Did you ever sign a card for Local 999 Teamsters?

A. No.

Q. Did you ever in any other way give Local 999 Teamsters permission to negotiate with Sprain Brook Manor for you for your wages, hours and terms and conditions of employment?

A. No, sir.

\* \* \* \* \*

315

## EXAMINATION

Q. (By Mr. Horowitz) Mrs. Warren, you work from seven to three, is that correct? A. Yes.

Q. In the month of February, did you see any delegate from Local 999 Teamsters? A. No, I didn't.

Q. In the month of March did you see any delegate from Local 999 Teamsters? A. No.

316

Q. Have you ever had any conversations with anyone from Local 999 Teamsters, whatsoever? A. No.

Q. Have you ever seen anyone from Local 999 teamsters around Sprain Brook? A. I seen them, but I didn't talk to them.

Q. Do you remember seeing them in the month of February, 1974, speaking to employees of Sprain Brook? A. Yes, I heard they were there, but I didn't speak to them.

I heard they were there.

\* \* \* \* \*

317

## REGINA DeGHETTO

called as a witness, having been first duly sworn in by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

THE WITNESS: Regina DeGhetto, 1 Amherst Drive, Yonkers, New York.

## DIRECT EXAMINATION

Q. (By Mr. Portnoy) What's your job Mrs. DeGhetto?  
A. Ward Clerk, third floor.



Q. Did you ever sign a card for Local 999 Teamsters?

A. No.

Q. Did you ever authorize Local 999 Teamsters to bargain for you with your employer concerning wages, hours, and terms and conditions of employment? A. No.

Q. In no way, shape or form? A. No way, shape or form.

\* \* \* \* \*

319

## EXAMINATION

Q. (By Mr. Horowitz) Mrs. DeGhetto, when you saw the agent from Local 999 in the building, did you see him talking to any of the employees? A. Yes, we were just coming in that morning.

Q. Did you see him handing any cards out or literature? A. He handed out some cards.

Q. Did he hand any to you? A. No, I didn't take any because it was 999 and it's a Teamsters Union.

Q. What does that mean? A. I didn't see any connection in a nursing home with a Teamsters Union.

Q. But, you saw the agent from 999 hand out cards to other employees? A. Well, yes.

320

They were there, ready at the time clock and he was in there handing out cards.

\* \* \* \* \*

## DONNA DeGHETTO

called as a witness, having been first duly sworn in by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

THE WITNESS: Donna DeGhetto, 1 Amherst Drive, Yonkers, New York.

#### DIRECT EXAMINATION

Q. (By Mr. Portnoy) Miss DeGhetto, what was your job at Sprain Brook? A. Dietary aide.

Q. Did you ever sign a card for Local 999 Teamsters? A. No.

Q. Did you ever in any way authorize Local 999 Teamsters to bargain for you on your behalf with your employer, Sprain Brook, concerning your wages, hours and terms and conditions of employment? A. No.

\* \* \* \* \*

#### CHRISTINA MILITANA

called as a witness, having been first duly sworn in by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

THE WITNESS: Christina Militana, 70 East Wind Road, Yonkers, New York.

#### DIRECT EXAMINATION

Q. (By Mr. Portnoy) What's your job? A. Dietary aide.

I work in the kitchen.

Q. Did you ever sign a card for Local 999 Teamsters? A. No.



Q. Did you ever in any other way authorize Local 999 Teamsters to bargain for you with your employer concerning your wages, and hours -- A. No.

Q. (Continuing) -- terms and conditions of employment?  
A. No.

\* \* \* \* \*

324

## MYRTLE CLARK

called as a witness, having been first duly sworn in by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

THE WITNESS: Myrtle Clark, 77 Ravina Avenue, Yonkers, New York.

## DIRECT EXAMINATION

Q. (By Mr. Portnoy) Mrs. Clark, what's your job?  
A. Nurse's aide.

Q. Did you ever sign a card for Local 999 Teamsters?  
A. No.

Q. Did you ever in any other way authorize Local 999 Teamsters to bargain with your employer, Sprain Brook, concerning your wages, hours and working conditions? A. No.

\* \* \* \* \*

330

## LERIE BAKER

called as a witness, having been first duly sworn in by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

THE WITNESS: Lerie Baker, 453 South 8th Avenue, Mt. Vernon, New York.

DIRECT EXAMINATION

Q. (By Mr. Portnoy) Mrs. Baker, what's your job?

A. Nurse's aide.

Q. Did you sign a card for Local 999 Teamsters?

A. No.

Q. Did you in any other way authorize Local 99 Teamsters to negotiate a contract for you with your employer concerning your wages, hours and terms and conditions of employment?

A. No.

MR. PORTNOY: That's all I have.

\* \* \* \* \*

335

LILLITAN THOMAS

called as a witness, having been first duly sworn, by the Judge, was examined and testified as follows:

336

JUDGE WELLES: Please give your name and address to the Reporter.

THE WITNESS: Lillian Thomas, 1 Cottage Garden, Yonkers, New York.

DIRECT EXAMINATION

Q. (By Mr. Portnoy) What's your job Mrs. Thomas?

A. Nurse's aide.

Q. Did you ever sign a card for Local 999 Teamsters?

A. Yes, I did.

Q. You signed a card for Local 999? A. No, for 1199.



MR. HOROWITZ: I object, Your Honor.

Q. (By Mr. Portnoy) Did you ever give permission to Local 999 Teamsters to bargain with the employer on your behalf over your wages and hours? A. (No response.)

Q. Did you ever tell 999 representatives that it's okay for you to talk to the employer and negotiate over my wages and hours?

A. No, I did not.

\* \* \* \* \*

342

MAUDE DRACKETT

343

called as a witness, having been first duly sworn in by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

THE WITNESS: Maude Drackett, 54 South 2nd Avenue, Mt. Vernon, New York.

#### DIRECT EXAMINATION

Q. (By Mr. Portnoy) What's your job, Mrs. Drackett?  
A. Nurse's aide.

Q. Did you ever sign a card for Teamsters Local Union 999? A. I never did.

Q. Did you ever authorize Teamsters Union Local 999 to negotiate a contract with your employer concerning your wages, hours, working conditions? A. No, I never did anything with 999.

\* \* \* \* \*

351

GLADYS JOHNS

called as a witness having been first duly sworn in by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

THE WITNESS: Gladys Johns, 25 Woodrow Avenue, Yonkers, New York.

#### DIRECT EXAMINATION

Q. (By Mr. Portnoy) What's your job? A. Nurse's aide.

Q. Did you ever sign a card for Teamsters Local 999? A. No, I didn't.

352 Q. Did you ever in anyway authorize Teamsters Local 999 to represent you concerning your wages, and hours and terms and conditions with your Employer, Sprain Brook? A. I did not.

MR. PORTNOY: That's all I have.

\* \* \* \* \*

368

#### ANTHONY DeFRANCO

called as a witness, on behalf of Local 999, and having been first duly sworn by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

THE WITNESS: Anthony DeFranco, 156 Katz Avenue, Paterson, New Jersey.

#### DIRECT EXAMINATION

Q. (By Mr. Craner) In February, 1974 were you a business agent of Teamsters 999? A. I was.

Q. Did you have occasion during that period of time to be present at Sprain Brook Manor, Scardale, New York? A. I was.



Q. Did you at that time distribute organizational cards to employees of Sprain Brook?

MR. PORTNOY: Objection.

369

Q. (By Mr. Craner) What did you do at Sprain Brook while you were there? A. We handed out organizational cards.

Q. Were any of those cards returned to you personally?

A. There were a few handed -- given back to us after we gave them to the people.

They weren't handed directly to me, they were handed to the other business agent that was there.

Q. There was another business agent with you? A. Yes.

Q. Do you know if any were ever returned to the office in Paterson? A. The biggest majority was sent through the mail.

Q. Did you have anything further to do with the recognition at Sprain Brook? A. No, sir.

\* \* \* \* \*

#### CROSS EXAMINATION

\* \* \* \* \*

370

Q. (By Mr. Portnoy) Approximately how many firms do you handle? A. About 40.

Q. The negotiations and grievances? A. Yes.

Q. When was the first time that you were present at Sprain Brook Manor? A. I don't know the exact date, it was in February.

Q. Early February, middle or latter February?

A. It could have been the second week, the third week, I'm not sure.

Q. Do you know if -- Who told you to go to Sprain Brook Manor? A. No one told me, we just happened to be riding by there, found out there was no union and came back again.

Q. Who were you with? A. (No response.)

Q. Who were you with? A. Another fellow and myself.

Q. What's his name? A. The other business agent.

371

Q. What's his name? A. Mr. Yannucci.

Q. What time of the day was this that you were riding by?

A. It was early in the morning, I don't know exactly what time it was.

It was in the morning.

Q. It was in the morning? A. Yes.

Q. Was it before breakfast or after breakfast? A. It could be around breakfast, I don't remember exactly.

Q. Could it have been as early as 7:00 o'clock in the morning? A. Not the first time, no.

\* \* \* \* \*

Q. (By Mr. Portnoy) What had you been doing before you went to Sprain Brook Manor?

JUDGE WELLES: You mean that day?

MR. PORTNOY: Yes.

THE WITNESS: Where were we before we went there?

372

Q. (By Mr. Portnoy) Yes. A. We were just riding around up in Scarsdale, up in that area.

Q. Just riding around? A. That's right.

Q. Where had you come from? A. Where did I come from?

No place in particular, we were just riding around and we came down in that area.

Q. Well, where had you started out from that day?

From the office in Paterson? A. From Jersey.

I went to the Bronx and took a ride around and we happened to see this place and stopped.



Q. Was there any particular reason why you went to the Bronx? A. No particular reason.

When we see a nursing home, we stop to see if there is a union, if there isn't a union, we try to organize it.

Q. Who told you to go out to the Bronx? A. Nobody told me.

Q. You decided this on yourself? A. We have a plant up in the Bronx and we went there and then we took a ride around --

Q. What plant? A. (Continuing) -- which we don't often --

373

Q. What plant did you have out in the Bronx? A. What plant?

Q. Yes. A. Up on Blondell Avenue.

Q. What kind of business were they in? A. Plating.

Q. Plating? A. Yes.

Q. Metal plating manufacturer? A. Yes, right.

Q. What was the name of the company? A. Express Plating.

Q. Did you have any nursing homes in the Bronx? A. No.

Q. Did you have any nursing homes in Mt. Vernon? A. No.

Q. White Plains? A. No.

Q. Tarrytown? A. No.

Q. Yonkers? A. No.

Q. None in Scarsdale? A. No.

374

Q. Did you have any nursing homes at all in Westchester County that you represented? A. None.

Q. Did you represent any nursing homes in Putnam County? A. No.

Q. Rockland County, New York? A. None.

I said to you before we just rode around, we were riding around and we happened to look this one, and I can't answer you any other way.

Q. Now, when you came to Sprain Brook Manor, you said it was around breakfast time? A. I said it was in the morning.

I didn't say it was at breakfast time because I don't know exactly what time it was, but it was before lunch.

Q. Now, were there any other times that you were at Sprain Brook Manor? A. After that?

Q. Yes. A. We were there a couple of times after that.

Q. How long was -- how many times would you say that you were there after that first time? A. How many times.

Q. Yes. A. As far as giving cards out, we gave cards out three times.

375

Q. When was the approximate date of the second time?

A. Well, within a week's time, three or four days, yes.

Q. When was the third time? A. Maybe the day after that.

If you are asking me for specific dates, I can't give them to you, because I don't remember.

Q. Now, coming back to the first time, were you in the premises? A. No.

Q. You were outside the premises? A. Yes, sir.

Q. Where on the outside were you? A. Outside on the driveway in that area.

Q. Who -- how many people -- now, there was a Yannucci with you? A. Yes.

Q. Anyone else in your car with you at that time? A. At that time, no.



Q. How many employees did you meet the first time?

A. The first time I met one fellow that wasn't an employee.

Q. You met one fellow that was not an employee?

A. Right.

376

Q. Who was that fellow? A. I don't know.

He was a total stranger to me.

Q. How did you know he was not an employee? A. He told me he wasn't.

I asked him if he knew anything about this place, whether or not they had a union and he said to his knowledge, no, that's why we went back.

\* \* \* \* \*

377

Q. (By Mr. Portnoy) What was the entire conversation?

MR. CRANER: If the witness can recall it.

THE WITNESS: I cannot recall the conversation.

All I asked the man if he worked -- what the thrust of the whole conversation was -- I don't remember.

I asked him if he worked there and he said no, I asked him whether or not -- do you know whether there is a union here and he said to my knowledge, no.

Q. Now, when you saw that individual, where was he coming from? A. You know, if you are trying to trap me, let me tell you one thing and I am not trying to be arrogant, I told you I saw him standing in front of the building in a driveway, but, where he came from or where he was going I don't know.

Q. Now, did you ask him how familiar he was with the nursing home? A. You know, again, I got to say this:

I told you the only part I remember.

I don't remember the whole conversation.

I asked him the two questions and this is what I was interested in and that's it.

378 Q. So, then, some of your testimony at this point is that you went around and you were cruising and then you found this gentleman and then you relied on this man's word, is that right? A. Well, he told us there was no union there and we went back, that's exactly it.

Q. And this man never worked there and you don't have -- A. Wait a minute, please, you are asking me about an individual who I don't know.

I never saw this man before in my entire life and I wouldn't know him if he walked in that door.

(Indicating.)

\* \* \* \* \*

Q. Now, let's take the second time that you were there. After you came back, how did you come to take this second trip up to Sprain Brook Manor? A. We had gotten some cards.

Q. You had gotten some cards? A. Yes.

JUDGE WELLES: I think there is confusion as to the second trip in terms of giving out cards and after the first trip when he gave out cards, perhaps you can clarify that.

379 Q. (By Mr. Portnoy) At this first trip -- A. Are you talking about -- you are trying to confuse me, are you talking about the first or second trip?

Q. Let's go back to the first trip.

You didn't give you any cards? A. Not when I saw the man.

Q. Not when you saw the man? A. No.



\* \* \* \* \*

380 Q. So, you went back the second time? A. Right.

Q. Did anyone tell you to go back. A. No. Nobody  
had to tell us to go back.

When there wasn't a union there, we went back.

Q. Did you speak to Mr. DeAngelo about going back?

A. He's my boss. Sure I told him where I am going.

Q. And he told you to go back up there? A. He doesn't  
have to tell us to go back.

If we find out there is no union, we can do it on our own.

Q. Who did you go with? A. Mr. Yannucci.

Q. What time of the day did you go back, did you arrive  
in the Sprain Brook Manor on the second trip? A. In time for the  
first shift going there.

Q. In time, when was that time? A. Well, about 7:00  
o'clock.

Q. Did you stay outside the building or inside the building?  
A. Outside the building.

Q. How many people did you meet outside the building?  
A. Quite a few people that went in and took cards.

Q. How many? A. I don't know exactly how many.

381 Q. Was it 15? A. Wait a minute, my memory --

MR. PORTNOY: Your Honor, I ask Your Honor to direct  
this witness to answer the question.

JUDGE WELLES: Go ahead.

MR. CRANER: He is responsive.

Try and answer his question, he is not very happy with your  
answer, but try to answer them.

MR. PORTNOY: I move to have Mr. Craner's remark about me being unhappy with this witness' answers stricken from the record.

MR. CRANER: I object to the comment.

JUDGE WELLES: Continue with your questioning please Mr. Portnoy.

THE WITNESS: Could you ask me the next question.

Q. (By Mr. Portnoy) Was it as many as ten people?

A. Ten people going in?

Q. What you distributed cards to? A. No, we distributed cards to everybody that went in there, I would say more than ten.

Q. Twenty? A. It could have been twenty or more, I don't know exactly, but I know it was more than ten.

Q. More than ten? A. Yes.

Q. So, can you search your memory and see if you can recollect how many cards -- how many people you saw approximately at that point.

I would like to know if you saw more than 25 or 30.

I want you to tell us. A. It could be in the neighborhood of 25 or 30.

Q. Did any of these people sign cards while you were there?

A. While I was there someone came out and handed the other fellow some cards.

Q. Someone came out? A. Yes, I don't know who it was. It had to be somebody with a uniform, a blue uniform it looked like.

I don't know, I maybe color blind, but I know it was a uniform.

Q. You handed Mr. Yannucci cards, right? A. Yes.

Q. You didn't see any cards signed in your presence?

A. No, they took them in the nursing home and came back with them signed.



Q. Did you go into the nursing home at anytime during this visit? A. That visit, no.

383 Q. When the people -- when the cards were handed back, did you hand it back to Mr. Yannucci?

Did you count those cards? A. No, I didn't count them.

Q. Did you look at the addresses? A. When I went back to the office we looked at them.

Q. Did you see what -- not at that time, but at some other time did you count them in the office? A. Pardon?

Q. Did you count the cards in the office? A. They were counted.

Q. How many cards did you have? A. I think there were 12.

Q. 12 cards? A. At that time.

\* \* \* \* \*

384 Q. How many nursing homes do you represent? A. Six.

\* \* \* \* \*

385 Q. (By Mr. Portnoy) Give us a description of the person who handed the cards to you? A. It was a woman.

Q. It was a female? A. Yes, but I can't describe her.

Q. You don't know whether she was a short woman or tall woman? A. I couldn't describe her.

Q. Thin woman or chubby or black or white? A. I couldn't describe her.

\* \* \* \* \*

386 Q. Now, during this third visit, what time of the day did  
387 you arrive there? A. Same time.

Q. You arrived at the first shift? A. Yes.

Q. About 7:00 A.M.? A. Right.

Q. Did you go inside the building? A. I got permission to make a phone call.

\* \* \* \* \*

Q. How many employees did you talk to, how many employees did you talk to? A. It could have been ten.

Q. Did you get any cards back? A. Yes, we got a couple back that morning, too.

Q. Two? A. No, we also got a couple back, if could have been two or three.

Q. Now, would you recognize any of these people who signed the cards? A. No.

Q. Any of these who gave you cards, did they sign them in your presence? A. No.

\* \* \* \* \*

Q. How long were you out there this morning? A. Five minutes, ten minutes.

Q. Is that about the same length of time when you were handing out cards on the second and third visit? A. Maybe not as long.

Q. Not as long? A. Not as long, they were going in.

\* \* \* \* \*

## EXAMINATION

Q. (By Mr. Horowitz) Mr. DeFranco, do you represent other companies in New York other than Express Plating? A. We have one in Long Island.



\* \* \* \* \*

390 Q. (By Mr. Horowitz) Do you have other companies in  
New York that you represent? A. There are three alto-  
gether.

\* \* \* \* \*

# REDIRECT EXAMINATION

Q. (By Mr. Craner) Mr. DeFranco, is cruising around  
a common method of organizing as far as you are concerned?

A. It's the only way anybody in our line of business would try  
and attempt to organize.

Q. You were asked a question on cross examination that  
you wanted to explain about going inside the premises to make a  
telephone call.

\* \* \* \* \*

392

# MARY ONORATO

called as a witness, having been first duly sworn in by Judge  
Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to  
the Reporter?

THE WITNESS: Mary Onorato, 100 Gateway Road, Yonkers,  
New York.

# DIRECT EXAMINATION

Q. (By Mr. Portnoy) Mrs. Onorato, what's your job?  
A. I am a registered nurse.

Q. Did you ever sign a card for Teamsters Union Local  
999? A. No.

Q. Did you in any other way authorize Teamsters Local 999 to represent you for the purposes of negotiating a contract with your employer, Sprain Brook concerning your wages, hours and working conditions? A. No.

\* \* \* \* \*

#### JOAN ENEA

called as a witness, having been first duly sworn in by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

THE WITNESS: Joan Enea, 81 Sprain Valley Road, Scarsdale, New York.

#### DIRECT EXAMINATION

Q. (By Mr. Portnoy) Mrs. Enea, what's your job?

A. Ward Clerk.

Q. Did you ever sign a card for Teamsters Local 999?

A. No.

Q. Did you ever in anyway authorize Teamsters Local 999 -- A. No.

Q. (Continuing) -- to bargain for you concerning your wages, hours and working conditions? A. No, no.

MR. PORTNOY: That's all I have.

#### CROSS EXAMINATION

\* \* \* \* \*

Q. (By Mr. Horowitz) Mrs. Enea, did you see anyone from Local 999, any agent from 999 in February, 1974 around Sprain Brook handing out cards? A. Yes, I did.



Q. Did you see the gentleman who was standing outside --

A. Yes, I saw him there.

Q. (Continuing) -- just a few moments ago? A. Yes.

Q. Was he one of the men who you saw handing out cards?

A. Yes.

Yes, he was.

Q. You saw him handing out cards? A. Yes, I did. I don't recall, you know, what date, but I did see him.

Q. Sometime in February? A. Yes.

Q. Did he hand you a card? A. Well, no, he didn't because it was someone else, the other person.

396 Q. His cohort or the gentleman who was with him handed you a card?

\* \* \* \* \*

397 Q. There was a meeting held? A. If you want to call it that.

I don't call that a meeting.

\* \* \* \* \*

398 Q. (By Mr. Horowitz) Tell me what a meeting is if this wasn't a meeting. A. Well, it was not my idea of a meeting.

Q. What is your idea of a meeting? A. It was misinformed.

Q. Who misinformed you? A. Oh, I don't recall who -- we were misinformed.

Q. Who misinformed you, you are the witness, who misinformed you? A. Well, I have to think about it.

I have to think back to who informed us of that so-called meeting.

Q. Please. A. Give me a minute to think.

Q. Take as much time as you like.

Then, tell us as well how much they misinformed you?

A. As far as I can recall back to that time which was a long time ago --

Q. Yes, Ma'am. A. As far as I can remember, we were told that there was to be a meeting in Mr. Book's conference room, that's all.

Q. Who misinformed you, that is the question. A. Well, I am trying to think of who said it.

I don't remember who said it.

399 Q. How were you misinformed? A. It wasn't -- I think we were more or less under the impression that that was a conference meeting between the owner and the employees.

There was no idea of anything.

\* \* \* \* \*

Q. (By Mr. Horowitz) Who told you that there was a meeting of the employees? A. I was at my desk, Mr. Horowitz, on the floor and I don't recall who said it, but it was more or less by word of mouth from one person to another that we were, the second floor was to go down to the conference room, that's it, with no explanation.

\* \* \* \* \*

Q. (By Mr. Horowitz) Where were you misinformed?

A. We were under the impression it was a meeting between Mr. Book and the employees.

400

Q. How could you have been under that impression?

A. Why would I be asked to go down there?



There is no other reason that we would be asked to go there. We have been in there other times with conferences between the owner and the employees.

\* \* \* \* \*

Q. Now, how long did you stay at that meeting in March with Local 999? A. Very short time.

When I saw what it was about, I left.

401 Q. Five minutes? A. I didn't time myself, Mr. Horowitz. I don't know.

\* \* \* \* \*

402 Q. (By Mr. Horowitz) Do you remember the date in February that the two men from Local 999 were handing out cards? A. No, I don't remember the date, no.

It was sometime in late February.

Q. Do you remember the day? A. No, I don't recall.

Q. Do you remember when in February? A. I would say probably in the latter part of February, but I don't remember what the date was.

Q. Do you remember if they said anything to you when they handed you the card? A. Not particularly, no.

Q. Did they say anything to you? A. Well, just that they represented 999, you know, I saw that when I saw the cards.

Q. No, did they say anything to you as they handed the card to you? A. No.

Q. They said nothing to you? A. Nothing that I thought was -- that I can recall, no.

Q. Did they ask you to sign a card? A. No.

Q. Did they ask you to sign a card and mail it back to them? A. Yes, something to that effect I would say.

403

Q. So, they did ask you to sign a card then, didn't they?

A. They said something to the effect, if you would like to sign and if you want to sign, or something and mail it out, they did say something about mailing it.

Q. Did they say something to the effect that -- didn't they ask you to sign a card and mail it back? A. They said something to the effect about signing it and mailing it back.

\* \* \* \* \*

404

Q. (By Mr. Horowitz) In the statement that you gave to

the Labor Board, did you under oath tell the Board agent that a

405

representative of 999 Teamsters gave you a card and asked you to fill it out and mail it in, is that correct? A. I said that before.

Q. Is that correct? A. Well, I guess it is if you are reading it.

\* \* \* \* \*

#### REDIRECT EXAMINATION

Q. (By Mr. Portnoy) When you met these gentlemen from 999, were there other employees there? A. I was coming into work that morning and there were others, you know, in the lobby also coming and going more or less, you know, there were some already in the building, they were down on the floor and there were others coming into work as I was.

Q. Did you see what -- where were these gentlemen who you saw? A. They were inside the building in the lobby.

Q. In the lobby? A. Yes.

Q. How long were they there? A. They were there -- well, I had -- I punched my time card and I went up on the floor and



406

I must have come back down I would say about a half an hour or so later and they were still there.

They were there a good part of the morning I would say.

Q. How long? A. I can't recall in time Mr. Portnoy, really.

Q. When you first saw these gentlemen, what did you see these gentlemen doing? A. They had cards in their hands and as everyone passed them, they were distributing cards.

Q. When you saw them a half an hour later what were they doing? A. Well, when I had -- I remember at one point that the director of nursing had approached them and asked who they were and what they wanted and, you know, in short she more or less was telling them to leave, yes.

Q. When did this happen?

When did this happen? A. In the morning, that morning.

Q. How long after they were on the premises? A. Well, I would say maybe an hour, three quarters of an hour, an hour or so because they didn't leave when she told them, you know, they remained.

407

They said something about they had to make a phone call and they fumbled for change and it looked -- you know, it was a delayed thing.

Q. Then what happened? A. That's all I remember.

I went back up on the floor and that's the last I heard about it.

Q. Before the director of nursing approached them, what were these men doing? A. They were just standing in the lobby and as I said, as everyone came by or came in, they had cards in their hands.

Q. Did you see anyone sign cards at that time? A. I didn't, no. \* \* \*

\* \* \* \* \*

411

## LUCY TOWNS

called as a witness, having been first duly sworn in by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

THE WITNESS: Lucy Towns, 423 South 8th Avenue, Mt. Vernon, New York.

## DIRECT EXAMINATION

Q. (By Mr. Portnoy) What's your name? A. Lucy Towns.

Q. What's your address? A. 423 8th Avenue.

Q. Mrs. Towns, what's your job? A. Nurse's aide.

Q. Did you ever sign a card for Teamsters Local 999?  
A. No.

412

Q. Did you ever authorize Teamsters Local 999 to bargain with Sprain Brook concerning your wages, hours and working conditions of employment? A. No.

\* \* \* \* \*

414

## MAVIS WEST

called as a witness, having been first duly sworn in by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

THE WITNESS: Mavis West, 163 West 3rd Street, Mt. Vernon, New York.



DIRECT EXAMINATION

Q. (By Mr. Portnoy) What's your job? A. Nurse's aide.

Q. Did you ever sign a card for Teamsters Local 999?  
A. No, I never did.

415 Q. Did you ever in anyway authorize Teamsters Local 999  
to bargain for you concerning your hours, wages, working  
conditions with your employer, Sprain Brook? A. 999?

Q. Yes. A. No.

\* \* \* \* \*

418

REBECCA DAVIS

called as a witness, having been first duly sworn in by Judge Welles,  
was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the  
Reporter.

THE WITNESS: Rebecca Davis, 4425 Mundy Lane, Bronx,  
New York.

DIRECT EXAMINATION

Q. (By Mr. Portnoy) What's your job? A. Nurse's aide.

Q. Did you ever sign a card for Teamsters Local 999?  
A. No, I did not.

Q. Did you ever authorize in any other way Teamsters  
Local 999 to bargain for you with your employer concerning wages,  
hours, and conditions of employment? A. No.

\* \* \* \* \*

419

## PATRICIA O'NEILL

called as a witness, having been first duly sworn in by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

THE WITNESS: Patricia O'Neill, 84 Crestwood Avenue, Tuckahoe, New York.

## DIRECT EXAMINATION

420

Q. (By Mr. Portnoy) Miss O'Neill, what's your job at Sprain Brook? A. Part time dietary aide.

Q. Did you ever sign a card for Teamsters Local 999? A. No.

Q. Did you ever in any other way authorize Teamsters Local 999 to bargain on your behalf concerning wages, hours and working conditions with your employer, Sprain Brook? A. No.

\* \* \* \* \*

421

## SYBIL LEWIS

called as a witness, having been first duly sworn in by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

422

THE WITNESS: Sybil Lewis, 113 1/2 Clinton Street, Yonkers, New York.

## DIRECT EXAMINATION

Q. (By Mr. Portnoy) What's your job? A. Licensed practical nurse.



Q. Did you ever sign a card for Teamsters Local 999?

A. No, sir.

Q. Did you ever in any other way authorize Teamsters Local 999 to represent you? A. Never.

\* \* \* \* \*

423

BARBARA HICHAK

called as a witness, having been first duly sworn in by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

424

THE WITNESS: Barbara Hichak, 91 Pomona Avenue, Yonkers, New York.

DIRECT EXAMINATION

Q. (By Mr. Portnoy) Miss Hichak, what's your job at Sprain Brook? A. I was employed as an LPN.

Q. Licensed practical nurse? A. Yes.

Q. Did you ever sign a card for Teamsters Local 999? A. No.

Q. Did you ever authorize in anyway Teamsters Local 999 to represent you in collective bargaining relations with your employer? A. No.

MR. PORTNOY: That's all I have.

\* \* \* \* \*

425

ELIZABETH ANDSON

called as a witness, having been first duly sworn in by Judge Welles, was examined and testified as follows:

JUDGE WELLES: Please give your name and address to the Reporter.

THE WITNESS: Elizabeth Andson, 208 Fulton Avenue, Mt. Vernon, New York.

426

## DIRECT EXAMINATION

Q. (By Mr. Portnoy) I would like to call your attention to the fact that Page 2, Exhibit A, it is spelled S-e-n, that's from the payroll and G.C. 5 it is spelled the same way.

JUDGE WELLES: This is the same person

MR. PORTNOY: Yes.

THE WITNESS: Yes.

Q. (By Mr. Portnoy) What's your job Mrs. Andson?

A. Nurse's aide.

Q. Did you ever sign a card for Teamsters Local 999?

A. No. I have never.

Q. Did you ever authorize Local 999, Teamsters Local 999 to represent you in collective bargaining? A. No.

## CROSS EXAMINATION

427

Q. You have given a statement to the National Labor Relations Board, in fact, you gave two statements to the National Labor Relations Board and the first time you heard that Local 999 was trying to organize a union was in January, 1974, is that correct? A. Sometime around there.

I can't remember exactly what date, because I did not put it down.

It was somewhere around that time. I can't recollect the right time.



Q. You gave a statement that after you heard that 999 was attempting to organize, you then called up 1199, is that correct?

A. Yes, I called them up.

\* \* \* \* \*

428 Q. In your affidavit you disclosed, you said to the National Labor Relations Board, to the government that the first time you heard that 999 was attempting to organize Sprain Brook was in January of 1974, is that correct?

\* \* \* \* \*

430 Q. (By Mr. Horowitz) In the affidavit you stated that  
431 on or about January 27, 1974, that Local 999 was coming in --  
MR. PORTNOY: He is reading the entire statement in the affidavit.

MR. HOROWITZ: I will allow the witness to do this.

MR. PORTNOY: I will provide the witness with a copy.

MR. HOROWITZ: Fine.

Q. Would you read where it says four, right over here (indicating). A. I was working --

Q. Excuse me, right above that. A. On January 27, 1974, I was to come in to work by 11:00 o'clock --

Q. Excuse me, it says on or about January 27, 1974 as I was coming into work at 11:00 P.M. -- A. That's right.

Q. Could you read that? A. Some other employees of --

Q. Can you read English Ma'am? A. I'm sorry, Mrs. Davis and Mrs. --

Q. Is that Maude Drake? A. And Maude Drake and Lucy and Becky Jones and Elizabeth Presson and Mrs. Oliveri was telling me that --

432

Q. Does it say was telling me? A. Was told me.

Q. Where does it say was? A. Mrs. Oliveri was told --

Q. Does it say --

MR. PORTNOY: Your Honor?

MR. HOROWITZ: Well, she is reading from an affidavit.

THE WITNESS: Mrs. Oliveri told me that Local 999 Teamsters were --

Q. Does it says Teamsters there, Ma'am? A. Yes, it says I.B.T.

Q. Go ahead. A. Was coming in -- no, had come in that night to give --

Q. That's not what it says, does it? A. To come in --

Q. No, it doesn't say that, does it? A. Come in --

Q. It says was coming in. A. No, there is no was here.

\* \* \* \* \*

436

Q. Now, after you had your meeting with your fellow employees, Maude Drake, Mrs. Davis, Lucy and Betty Jones, et cetera, you then called up 1199, is that correct? A. Yes.

437

Q. Is that correct? A. Yes.

MR. PORTNOY: There was no meeting.

THE WITNESS: We didn't have no meeting, now.

It wasn't no meeting.

What I called -- when we was talking --

Q. You didn't have a meeting? A. No, there was no meeting.

Q. You were walking around on the shift, speaking?

A. It wasn't on a shift, it was outside.



Q. Were you together? A. What?

Q. Were the group of you together? A. Yes, but it wasn't no meeting.

Q. You called up 1199? A. Yes.

Q. That night? A. No. I called them that morning when I got home.

Q. What did you tell 1199? A. I would like for him to come around and I want to speak to him.

Q. Did you tell him why? A. We would like to have 1199 and we would want them. We didn't want a Teamsters union because they were from Jersey.

438 Q. You told them that you didn't want the Teamsters Union to organize you people, you wanted the 1199? A. Yes.

\* \* \* \* \*

442

# MARIA VIDAL

called as a witness, having been first duly sworn by Judge Welles, through the interpreter, testified as follows:

Q. (By Mr. Portnoy) What is your full name? A. Maria Vidal.

Q. What's your home address? A. 100 Harriet Street, Yonkers, New York.

443 Q. Mrs. Vidal, what's your job? A. Nurse's aide.

Q. Did you ever sign a card for Teamsters Local 999?  
A. Yes.

\* \* \* \* \*

446

Q. (By Mr. Portnoy) Mrs. Vidal, what was the date when you signed a card for Teamsters Local 999? A. On the first of the month would be four months.

Q. Of which month? A. The first of the month coming, it's going to be four months.

Q. November? A. Yes.

Q. Okay.

Before July, 1974, before four months ago, did you in any way give permission to Local 999 to represent you for your wages and hours? A. No.

\* \* \* \* \*

# ANGEL PITA

called as a witness, having been first duly sworn by Judge Welles, through the interpreter, testified as follows:

447 Q. (By Mr. Portnoy) What's your full name? A. Angel Pita.

Q. Where do you reside? A. 108 Jefferson Street, Yonkers, New York.

Q. Mr. Pita, what's your job? A. Maintenance.

Q. Mr. Pita, did you ever sign a card for Teamsters Local 999? A. No, sir, never.

Q. Did you ever give permission to Teamsters Local 999 to represent you for your wages and hours? A. Regarding this, one day a man from Teamsters Local 999 came there and started to give cards and says he wanted to represent us for this and this. And I said, "As far as I'm concerned, it would be all right."

I didn't sign any card.

\* \* \* \* \*

449

# BERTA TORANSO

called as a witness having been first duly sworn by Judge Welles, testified as follows:



DIRECT EXAMINATION

Q. (By Mr. Portnoy) What is your full name? A. Berta Toranso.

Q. What's your home address? A. Jefferson Street in Yonkers. 108 Jefferson Street, Yonkers.

Q. Mrs. Toranso, what is your job? A. Laundry.

MR. PORTNOY: I call the Judge's attention to the fact that Mrs. Toranso was on page 3 of Exhibit A.

JUDGE WELLES: The nurses' aides, yes.

\* \* \* \* \*

Q. (By Mr. Portnoy) Mrs. Toranso, did you ever sign a card for Teamsters Local 999? A. No.

450 Q. Did you in any other way authorize Teamsters Local 999 to bargain with your employer Sprain Brook Manor concerning your wages and hours? A. No, nobody ever talked to me about this.

\* \* \* \* \*

451 HERNANDO HERNANDEZ

a witness, having been first duly sworn by Judge Welles, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Portnoy) What is your full name? A. Hernando Hernandez.

Q. Where do you live? A. 108 Jefferson Street, Yonkers.

MR. PORTNOY: Your Honor, I wish to point out that on General Counsel's Exhibit 9, under --

Q. Mr. Hernandez, what is your job?

MR. PORTNOY: Before I make my statement.

A. Maintenance.

Q. Okay.

MR. PORTNOY: I would like to point out the fact that on General Counsel's Exhibit 9, Exhibit A on the first page under Maintenance, there's a typographical error. Hernandez is spelled Fernandez.

JUDGE WELLES: I understand.

MR. PORTNOY: Okay.

Q. (By Mr. Portnoy) Mr. Hernandez, did you ever sign a card for Teamsters Local 999? A. No.

452 Q. Did you ever in any other way give permission to Local 999 to represent you for wages and hours? A. No.

\* \* \* \* \*

453 JUDGE WELLES: Back on the record.

454 During the off-the-record discussion, the parties -- and by the "parties," I mean the General Counsel and the respondent -- have agreed to stipulate that 46 more witnesses --

\* \* \* \* \*

JUDGE WELLES: Back on the record.

That 46 witnesses whose names will be -- and classifications -- will be read into the record -- would testify, each one would testify that they did not sign a card for Local 999 or did not in any other way authorize Local 999 to represent them or each of them for purposes of collective bargaining.

The Administrative Law Judge, that is, I, represented to counsel that this stipulation of the testimony of these 46 other witnesses in lieu of having them take the stand and so testify, would in no way affect my decision in the case.



My decision in the case when I do come to make it, will be the same based on the stipulation as it would have been had they actually testified in person.

\* \* \* \* \*

455 MR. PORTNOY: Irene Gruenfeld -- in the kitchen now,  
going down in the kitchen.

Michael Nesheiwat, N-e-s-h-e-i-w-a-t.

456 Amal Nesheiwat, A-m-a-l N-e-s-h-e-i-w-a-t;

Robert Tegtmeier, R-o-b-e-r-t T-e-g-t-m-e-i-i-r;

Samuel A. Salala, S-a-m-u-e-l A. S-a-i-a-l-a.

Physical therapy aide.

Thelma Cleveland, T-h-e-l-m-a C-l-e-v-e-l-a-n-d.

Maintenance.

Bartolo Radovanovich, B-a-r-t-o-l-o R-a-d-o-v-a-n-o-v-  
i-c-h.

Florentino Vidal, F-l-o-r-e-n-t-i-n-o V-i-d-a-l;

Ralph Ferraro, R-a-l-p-h F-e-r-r-a-r-o.

R.N.'s:

Afaf Nesheiwat, A-f-a-f N-e-s-h-e-i-w-a-t.

L.P.N.'s:

Wilma Ortiz, W-i-l-m-a O-r-t-i-z;

Wendy Chiaro, W-e-n-d-y C-h-i-a-r-o;

Carol J. O'Hara, C-a-r-o-l J. O-H-a-r-a;

Dorothy F. Kennedy, D-o-r-o-t-h-y F. K-e-n-n-e-d-y.

Nurse's aides:

Marian Cochetta, M-a-r-i-a-n C-o-c-h-e-t-t-a;

Elizabeth Preston, E-l-i-z-a-b-e-t-h P-r-e-s-t-o-n;

Betty Jane Jones, B-e-t-t-y J-a-n-e J-o-n-e-s;

457

Marian Montgomery, M-a-r-i-a-n M-o-n-t-g-o-m-e-r-y;  
 Margaret Mary Curran, M-a-r-g-a-r-e-t M-a-r-y C-u-r-r-a-n;  
 Dartres Lawrence, D-a-r-t-r-e-s L-a-w-r-e-n-c-e;  
 Patricia Armstrong, P-a-t-r-i-c-i-a A-r-m-s-t-r-o-n-g;  
 Panchita Lawson, P-a-n-c-h-i-t-a L-a-w-s-o-n;  
 Wilhelmina Kashi, W-i-l-h-e-l-m-i-n-a K-a-s-h-i;  
 Larry Lockhart, L-a-r-r-y L-o-c-k-h-a-r-t;  
 Mittie Ann Rice, M-i-t-t-i-e A-n-n R-i-c-e;  
 Joyce Sinclair, J-o-y-c-e S-i-n-c-l-a-i-r;  
 Miriam Oramas, M-i-r-i-a-m O-r-a-m-a-s;  
 Virginia Santiago, V-i-r-g-i-n-i-a S-a-n-t-i-a-g-o;  
 Daphne Dawkins; D-a-p-h-n-e D-a-w-k-i-n-s;  
 Doris Shields, D-o-r-i-s S-h-i-e-l-d-s;  
 Rosario Masdiaz, R-o-s-a-r-i-o M-a-s-d-i-a-z;  
 Fran Vetere, F-r-a-n V-e-t-e-r-e;  
 Warren Kochetta, W-a-r-r-e-n K-o-c-h-e-t-t-a;  
 Maria Rivera, M-a-r-i-a R-i-v-e-r-a;  
 Katherine Bellamy, K-a-t-h-e-r-i-n-e B-e-l-l-a-m-y;  
 Tomasa Hernandez, T-o-m-a-s-a H-e-r-n-a-n-d-e-z;  
 Edelmira Padron, E-d-e-l-m-i-r-a P-a-d-r-o-n;  
 Alice Weir, A-l-i-c-e W-e-i-r;  
 Xiomara Oramas, X-i-o-m-a-r-a O-r-a-m-a-s;  
 Norma Rodriguez, N-o-r-m-a R-o-d-r-i-g-u-e-z;  
 Ethlin Stewart, E-t-h-l-i-n S-t-e-w-a-r-t;  
 Nancy Rossa, N-a-n-c-y R-o-o-s-a;  
 Hattie Bowen, H-a-t-t-i-e B-o-w-e-n;  
 Beryl Thompson, B-e-r-y-l T-h-o-m-p-s-o-n;  
 Recreational aide:

458

Joyce Salmon, J-o-y-c-e S-a-l-m-o-n.



\* \* \* \* \*

JUDGE WELLES: Back on the record.

We have had read into the record, the names of the remaining 46 or 45, as the case may be, witnesses as to whom it is stipulated that if they testified, they would answer: No, no, to the two questions that have been asked of the witnesses who did apply.

\* \* \* \* \*

---

# United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

and

LOCAL 1199, DRUG AND HOSPITAL UNION, RWDSU,  
AFL-CIO

Intervenor

v.

HENRY BOOK, WILLIAM RUSS AND ROBERT KLEIN  
d/b/a SPRAIN BROOK MANOR,

Respondent

Nos. 75-4223, 75-4243

## CERTIFICATE OF SERVICE

I hereby certify that I have served by hand (by mail) two copies of the

APPENDIX

in the above-entitled case, on

the following counsel of record, this 30 day of December 1975.

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Harper & Dorn

Attn: Richard Dorn &

Harry Weinstock, Esqs.

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National Labor Relations Board

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Subscribed and Sworn to before me this